

The complaint

Mr S complains, via his representative about the advice he received from St. James's Place Wealth Management Plc ('SJP') to transfer two existing pensions to a new SJP plan in 2012. He's also complained about the inadequacy of the ongoing advice he subsequently received, and raised concerns about aspects of advice he received and excessive costs he incurred later on when he wanted to take his remaining pension benefits. Mr S says he's lost out as a result and is seeking compensation.

What happened

The following is a summary of the key events and background leading up to this complaint.

Mr S' relationship began with SJP in 2012 when he met with them to discuss his retirement planning and the possibility of transferring his two existing pensions held with another provider to SJP. SJP completed a fact-find to record Mr S' personal details and his circumstances and objectives. The key details recorded here were as follows:

- Mr S was 59, married, in good health and working – he was the controlling director of his own company.
- He had around £250 a month disposable income, a £5,000 emergency fund, around £20,000 in an ISA, £1,500 in stocks and shares, in excess of £500,000 in shares in his own company and he jointly owned his own home.
- He had an outstanding interest only mortgage of around £40,000 – the source of repayment was recorded as being his ISA and pension.
- His target retirement age was 65 and his two existing pensions had a combined value of around £45,000.
- Mr S' existing financial advisers were separating their business, so he had the choice to go with either partner, but he didn't want to and wanted to know if he could move elsewhere.
- His attitude to risk was deemed to be 'Medium.'

In a suitability letter of September 2012, SJP recommended Mr S transfer his pensions to a new SJP retirement plan.

Amongst other things it noted Mr S' objectives were to meet annually to discuss his pension, he didn't want responsibility for the day-to-day monitoring of funds / fund managers, charges weren't a concern as long as he felt he was getting value for money, and he wasn't funding for a specific target income but it was based on affordable contributions. The letter referred to the alternatives that were discounted including keeping things as they were, but that didn't address Mr S' desire for on-going advice. The letter referred to the impact of charges and said that the SJP plan could underperform his existing plans by 1.5% and 1.4% a year respectively and still match the benefits he was entitled to at age 65.

Amongst the disadvantages was an Early Withdrawal Charge (EWC) of 6% reducing by 1% a year. The letter also referred to ongoing reviews and said these would be carried out annually.

Mr S accepted the recommendation and the transfers duly went ahead.

In early 2014, Mr S met with SJP because he wanted to take his pension benefits. It was recorded that his wife was terminally ill and he wanted to spend more time together on holiday. He also wanted to take the opportunity to repay some debt. It was recorded that Mr S' business was up for sale and that he would keep working until it was sold.

Mr S' pension monies were switched into a money market fund pending his decision to take his benefits. And in March 2014, SJP recommended he take his tax-free cash and purchase an annuity with the remaining funds providing him with an income of just under £2,500 a year. It was noted his business had slowed down and so an income was now needed.

Mr S accepted the recommendation and he received his tax-free cash with the remaining funds sent to purchase the annuity. A few days later, 'pension freedoms' were announced by the Chancellor in the 2014 Budget (this gave more flexibility in how someone could access their pension benefits from April 2015.) As a result, Mr S actioned his cooling off notice. SJP agreed to re-instate the plans but minus the tax-free cash amount because Mr S had already used it. His funds were reinvested in the money market funds and the plans were deemed crystallised.

In April 2015 Mr S sought advice from SJP. SJP completed / updated a fact-find document. This recorded that Mr S wanted to encash his pension to fully repay his mortgage debt now. While his mortgage wasn't due for repayment for another five years, he was concerned that he wouldn't have the cash to repay it if his business didn't sell. It said he intended to use the proceeds of his business sale to fund his lifestyle. And it noted Mr S' view that, the amount in his pensions wouldn't make that much difference to him anyway, and he'd rather be debt free. The adviser noted they'd discussed the implications of withdrawing his entire fund – Mr S would suffer a 6% EWC and that some of the funds would suffer a 40% tax charge. It said Mr S would speak to his accountant about the tax point and he accepted he would save more in interest than the EWC over the period. He preferred the certainty of saving interest over the potential for growth.

In a suitability letter of 26 June 2015, SJP recommended Mr S utilise drawdown to fully access his remaining pension fund. Amongst other things the letter noted:

- The legislation changes meant Mr S could withdraw his full pension fund as he had originally wanted to do.
- Because Mr S had accessed his tax-free cash, he had until October 2015 to take his remaining benefits – either via an annuity or move to drawdown – otherwise it would be deemed an unauthorised payment.
- He intended to continue working to meet his income and expenditure needs.
- An annuity was discounted because Mr S didn't need an income – the reason he purchased an annuity last year was to access his tax-free cash to repay some of his mortgage, which he had done and was why he couldn't return it.
- UFPLS wasn't an option because Mr S had taken his tax-free cash.

- The intended withdrawal was above Mr S' Annual Withdrawal Allowance (AWA) and so would trigger a 6% EWC. Mr S understood this but still wanted to proceed because he felt he would still be better off repaying his mortgage – the interest saving would outweigh the EWC.
- The interest saving over five years would be around £3,200 versus an EWC of around £2,100.
- Withdrawing the entire fund meant it would be taxed at Mr S' highest marginal rate for the current tax year.
- In addition to the 6% EWC, there was an initial fee of around £300.

On 2 July 2015, Mr C received confirmation of the drawdown plan. And on 12 August 2015, Mr S received a £3,000 initial payment. This was done for tax code reasons. This fully utilised Mr S' annual withdrawal allowance incurring a £5.82 EWC. Shortly afterwards Mr S received the remaining amount. On 24 August 2015, he received a notice confirming the EWC of £2,126. And on 26 August 2015, confirmation that he'd been paid a net amount of around £18,000 after the deduction of the EWC and tax.

The same day, SJP has a record of Mr S contacting his adviser querying the amount he had received and why it was only around £18,000. The adviser explained the tax figure. Mr S said he wasn't happy with the cost of the early withdrawal, which the adviser explained was due to him taking the money in the first year. They said this was in the letter and it had been discussed at the time. Mr S was also unhappy at being told about the annual cost. The adviser recorded that a manager would call him.

In July 2024, Mr S complained to SJP using the services of a professional complaint representative, raising the points noted above.

Because SJP did not provide its final response to the complaint within the allocated time, Mr S referred his complaint to us.

One of our investigator's considered the matter and they concluded the complaint should be upheld, in part. Their findings were made across two assessments. In their first assessment, the investigator made some reasonable assumptions in the absence of information. SJP then provided further information in response, and to further requests, which changed things. This included clarifying that Mr S' existing retirement plans could not facilitate drawdown, it provided a complete copy of the 2015 suitability letter, it said ongoing advice charges commenced in July 2015 and Mr S was charged just over £10, so given the small sum involved it wouldn't look to refund it, and it said it had not provided a final response letter in August 2015, and it didn't have a record of a complaint being made.

SJP also objected to our consideration of the entire complaint because it said it had been made out of time.

It referred to Mr S' contact with his adviser in August 2015, as I noted above, saying that it was more than three years since Mr S should reasonably have become aware he had cause for complaint.

The investigator's ultimate conclusions and reasoning can be summarised as follows:

- The initial transfer advice in 2012 was not made out of time because there is no intervening event that ought to have prompted Mr S to question the advice more than three years before he complained.
- The transfer advice was suitable – Mr S' 'Medium' attitude to risk was reasonable, supported by the investments in his original pension plans, the charges of the SJP plan were lower, and while the EWC might have meant at his target retirement age Mr S would incur a 1% charge, his benefits could likely be structured to avoid this and in any event there was outperformance potential due to the lower charges prior to his retirement.
- Mr S' complaint about the cancellation of his annuity, him not being able to return his tax-free cash, and the delay in him being able then take benefits was out of time. Mr S would have known about these things at the time. And in any event, he benefitted from having the tax-free cash.
- Mr S' complaint about the alleged failure to re-invest his returned funds was made in time. But re-investment in the money market fund was suitable because Mr S' intention was to take the entire fund a year later – so it would have protected him against short term market fluctuations he wouldn't have had time to recover from otherwise.
- Mr S' complaint about the cost of withdrawal cannot be time barred. Mr S' contact with SJP in August 2015 was a complaint as defined in the rules. And given SJP has a record of that complaint, under DISP 2.8.2(2)R this stopped the clock. SJP did not issue Mr S with a final response letter, so he cannot be out of time under the six-month limb of the rule.
- Mr S was always going to incur tax in taking his benefits in the form he intended and, in any event, SJP wasn't responsible for it.
- It was unfair of SJP to charge Mr S an ongoing advice fee in 2015 – his intention was to immediately withdraw his funds, so SJP should have understood there was no prospect of him receiving ongoing advice. It also wasn't referred to in the suitability letter. And just because the sum involved is small, this isn't a reason not to refund it.
- SJP should refund Mr S the ongoing advice fee plus interest less a notional allowance for tax.
- To take the taxable portion of his pension, Mr S needed to transfer his funds to a drawdown plan, which involved new advice. SJP couldn't transact things without advice, so to avoid paying for advice, Mr S would have had to transfer his funds elsewhere.
- The costs were clearly disclosed in the advice paperwork, which Mr S signed. Mr S chose to stay with SJP in full knowledge of the costs involved, so they disagreed with Mr S' representative claim that SJP was fee 'double-dipping.'

The EWC represented the initial charges for the advice and the product. This was the cost of the advice and in nature, was equivalent to what another advice firm would have charged Mr S.

- There was nothing that warranted a distress and inconvenience award.

SJP replied and said that, while it maintained the ongoing advice fee was appropriate given the advice it provided to Mr S during July and August 2015, it was willing to accept the findings and refund the fee, if it resulted in the settlement of the complaint.

While Mr S, via his representative, accepted the findings about the ongoing advice, he disagreed with the conclusion reached about the EWC and the 'double-dipping' of fees. In summary he said:

- The fees were excessive and he was not aware of this.
- Regardless of the fact Mr S needed to transfer to a drawdown plan, the constraints in relation to early withdrawal should not have been changed – the EWC charging period should not have been reset.
- Mr S was under the impression that his initial agreement was reinstated to allow for the new advice, which was the result of SJP's changing its decision and its initial annuity purchase advice.
- SJP should have made concessions on the charging given things couldn't be achieved with the existing plan.
- Disclosure doesn't make bad advice good.
- The investigator's conclusion that the EWC representing the cost of the initial advice was flawed – it covers the cost from inception of a plan not amendments to existing agreements. His belief is that SJP would not change the EWC period where a client moves to flexi access drawdown as it is only a change of access option.
- If the annuity advice had not been given and Mr S transferred to a drawdown plan, SJP would not have then reset the EWC period. So, this should not have happened just because SJP pivoted on its advice.
- He's suffered significant financial detriment as a result of SJP charging again for drawdown advice.

The investigator wasn't persuaded to change their opinion.

In summary they said:

- They had not concluded the EWC was excessive.
- The EWC represented the cost of the advice, which was on an entirely new plan and not to an amendment of an existing one. Mr S had to move to a new plan because he didn't have the option of drawdown on his existing plan.
- SJP could in principle have reduced its charges – but it was entitled to charge for advice. It disclosed the charges, so Mr S made an informed decision. He could have gone elsewhere instead.
- SJP did not go back on its initial advice – the new advice came about following legislation changes, which led to Mr S rethinking his options. It was a change of circumstances from the original advice and Mr S' intention he would take his benefits at 65.

- The only error SJP made was charging Mr S an ongoing advice fee, which they didn't think had caused him any distress and inconvenience.

Mr S maintains that it was unreasonable for SJP to have charged him in the way it did knowing his intentions. So, because the matter could not be resolved informally, it was passed to me to decide.

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.

I've taken into account relevant law and regulations, regulatory rules, guidance and standards, codes of practice, and (where appropriate) what I consider to have been good industry practice at the relevant time. And where the evidence is incomplete or inconclusive I've reached my decision based on the balance of probabilities – in other words, on what I think is more likely than not to have happened, given the available evidence and wider circumstances.

Having considered all of this and the evidence in this case, I've decided to uphold the complaint, in part, for largely the same reasons given by the investigator. My reasons are set out below.

Firstly, I think it is necessary to be clear about what I need to decide here. This is because Mr S has made several complaint points and SJP has objected to our consideration of the complaint on the basis it is out of time. And it appears that certain elements of the investigator's findings have not been challenged, and so assumed to have been accepted.

Mr S has not challenged the investigator's findings about the suitability of the original pension transfer advice in 2012. So, I think it is reasonable to assume he has accepted this point. This means it isn't necessary for me to deal with this point, or as a consequence, address SJP's objection to us considering it, however wrongly argued, on the basis it was made out of time. Both matters fall away, so I don't need to decide these points here.

Equally, Mr S has not challenged the investigator's findings about the cancellation of his annuity, him not being able to return his tax-free cash, the delay in him then being able to take his benefits, the increased tax he incurred as a result, and the alleged failure to re-invest his returned funds. So, again, on the reasonable assumption that silence means Mr S has accepted the findings on these points, I don't need to decide these matters here.

That leaves the part of Mr S' complaint about the cost of withdrawal of his pension funds in 2015, which now appears to be the crux of his complaint. SJP believed this was also made out of time. I asked SJP to clarify whether it accepted the investigator's conclusion that we do have the power to consider this part of Mr S' complaint. SJP replied and said it wanted a decision on our jurisdiction to consider the complaint.

Why I can consider Mr S' complaint about the cost of withdrawal

The rules by which we operate are set out in the Dispute Resolution or DISP section of the FCA handbook. The relevant rule in this case is DISP 2.8.2R. This says that, unless a firm agrees:

'The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service:

(1) more than six months after the date on which the respondent sent the complainant its final response, redress determination or summary resolution communication; or

(2) more than:

(a) six years after the event complained of; or (if later)

(b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint;

unless the complainant referred the complaint to the respondent or to the Ombudsman within that period and has a written acknowledgement or some other record of the complaint having been received;

unless:

(3) in the view of the Ombudsman, the failure to comply with the time limits in DISP 2.8.2 R or DISP 2.8.7 R was as a result of exceptional circumstances;'

And in this case, SJP says it does not agree to us considering the complaint.

The event complained about – the costs involved in Mr S withdrawing his entire pension fund in 2015 – happened more than six years ago.

But importantly in this case, SJP has a record of Mr S contacting his adviser in August 2015, querying the costs or charges involved in withdrawing all of the funds from his pension. The note, as I referred to earlier on, also references Mr S' unhappiness with things. Under the DISP rules, a complaint is broadly defined as any oral or written expression of dissatisfaction about the provision of, or failure to provide, a financial service, which alleges a loss has been suffered relating to an activity of that firm.

I think it is clear that Mr S' contact with the adviser in 2015 following receipt of his pension monies reasonably meets the definition of a complaint under the rules, regardless of whether SJP regarded it as such or not at the time. Mr S was clearly expressing his dissatisfaction with the service he had received from SJP and implying he'd suffered a loss as a result.

So, given Mr S made a complaint within the relevant period and SJP has '...some other record of the complaint having being received' the requirements set out in the 'unless' paragraph of the rule above have clearly been met in this case. Also, SJP did not issue Mr S with a final response letter in response to his complaint at this time.

It follows that Mr S' complaint cannot be out of time under the above rule.

So, I've decided for these reasons, Mr S' complaint about the cost of withdrawing all of his funds from his pension in 2015, is one that I can consider.

The cost of withdrawal and the advice Mr S received in 2015

Moving on to the merits, or the substance of Mr S' complaint.

Ongoing advice fee

Firstly, in relation to the ongoing advice fee SJP charged Mr S when his drawdown plan commenced in 2015 – I can see that SJP had argued against refunding this because it provided Mr S with advice during July and August 2015, and that the sum involved is small. SJP did say that it would accept the investigator's findings if it settled the complaint. But because the complaint was not settled informally on this basis, I will address this point.

Like the investigator, I think it was unreasonable for SJP to charge Mr S an ongoing advice fee upon inception of his drawdown plan in 2015. I accept SJP provided Mr S with advice over the period in question. But it charged Mr S for that advice via other charges. And this was not ongoing advice. An ongoing charge should only be levied where a consumer is paying for ongoing service. In this case, there was no prospect of SJP providing, or Mr S needing, an ongoing service. This is because his intention was to withdraw the entirety of his pension fund immediately. And this was known by SJP – it was the basis upon which it was advising Mr S at this time. I see no reason which justifies SJP charging Mr S this fee.

I accept the amount charged was small – £10.54 according to SJP. But this isn't a reason not to give it back to Mr S. For the reasons above, I think SJP should not have levied this charge, and I consider it fair and reasonable that Mr S receives a refund. I will address how SJP should put things right below.

Early Withdrawal Charge / EWC

The main disagreement around the cost of Mr S withdrawing his pension monies in 2015 following the advice he received, centres on the EWC. Mr S, via his representative considers it was unfair for SJP to charge him in the way it did knowing his intentions, and considers SJP was 'double-dipping' – charging him for drawdown advice, which was advice to cancel previous advice – adding new unnecessary increased charges.

I've thought about this point carefully. And having done so, I don't think SJP did anything fundamentally wrong here when it advised him in 2015 – notwithstanding my finding above about the unfair ongoing advice fee.

I think it would be helpful to recap what led up to the 2015 advice.

The original advice in 2012 to transfer Mr S' existing pension plans and start a new SJP retirement plan was based on a target retirement age of 65. Mr S was 59 at this time. So, it seems likely that, based on Mr S' objectives at this time, he would not have likely incurred an EWC.

In 2014, it appears it was a change in Mr S' circumstances – primarily I think due to Mr S' wife being terminally ill – and something not reasonably foreseeable in 2012, that prompted SJP to provide Mr S with advice to access his tax-free cash and purchase an annuity. It seems this advice was given in good faith at the time, and based on current legislation, was the only viable option for Mr S to take his benefits given his fund value.

But shortly after, legislation changed providing consumers with greater flexibility around taking their pension benefits.

SJP would not reasonably have known this at the time of providing the advice in 2014. But understandably, this prompted Mr S to rethink his plans for his pension benefits, and it resulted in SJP agreeing to re-instate his plans.

But crucially here, because Mr S had used his tax-free cash for the purpose intended, he could not return it. And this ultimately meant Mr S' options for taking the remainder of his benefits were more limited.

In 2015, when Mr S sought SJP's advice again, his existing plan could not provide what he wanted. It did not provide a drawdown option, and he couldn't take an Uncrystallised Funds Pension Lump Sum (UFPLS) because he'd already taken his tax-free cash. It also meant Mr S had to access his remaining benefits via some means by October 2015, to avoid his tax-free cash payment being deemed an unauthorised payment resulting in a tax charge.

So, SJP's advice in 2015 was not as Mr S has said, it backtracking on previous advice or it changing its decision about the advice it provided. It was new advice prompted by a change in circumstances brought about by a change in legislation and to some extent, unfortunate timing and the fact Mr S had used his tax-free cash and so couldn't return it to SJP to put him back in exactly the position he would have been.

What's clear here is that for Mr S to achieve his objective of accessing his entire pension fund in the way he wanted, he needed to move to a new drawdown plan to allow for a taxable lump sum withdrawal. This was not an amendment to his existing plan. It was an entirely new product. And there were costs involved in achieving things and in SJP providing Mr S with advice – advice Mr S had sought from SJP.

For the avoidance of doubt, I think the advice was suitable. It enabled Mr S to meet his objective of withdrawing his entire fund to repay his mortgage, which given his particular circumstances at the time, was in my view reasonable. An annuity wasn't going to meet Mr S' needs. And as I said above, he needed to do something with his remaining benefits by October 2015. SJP considered and explained to Mr S that he could move to drawdown and wait to take his funds when his mortgage term was up. So, it's clear that SJP discussed an alternative option with Mr S and one which would have avoided him incurring the immediate EWC. But it's also clear from what's recorded that Mr S wanted the peace of mind of repaying his mortgage. The suitability letter referred to repayment of his mortgage now as taking away a great worry about how he was going to do so in five years' time. I think it's clear that Mr S' mind was made up.

Secondly, I consider SJP was clear about the costs involved with the advice, including importantly that an EWC would apply. This was clearly recorded as being discussed with Mr S in both the fact-find documenting the meeting with SJP, and in the later suitability letter it produced. And I think it is clear from the advice paperwork that Mr S both understood and accepted the costs, and he'd weighed things up. The reference to him saving a greater amount in mortgage interest versus the EWC is, in my view, evidence of this. I think he made an informed decision. While Mr S subsequently expressed his dissatisfaction with this, this does not change my view of things.

I can see Mr S has questioned the fairness of the charges. He says there was no reason to completely change the charging structure when SJP was fully aware of his intentions. He says SJP were aware of the detriment this posed to him, and it should have acted in his interests given it was changing the advice.

Once again, it was not the case that the charges Mr S incurred came about because SJP changed or went back on its advice. This was new advice based on a change of circumstances.

To imply that SJP created this scenario and then charged him unnecessarily is, in my view, unfair. SJP is entitled to charge for its advice – advice Mr S sought from SJP. It was the cost of doing business. And as I said above, the costs were clearly disclosed to Mr S. Mr S could have chosen to go elsewhere instead. But he would still have incurred charges. Transferring his existing plan would still have resulted in an EWC. And while lower than the one he incurred, he would also have still likely incurred fees with using another firm.

So, ultimately there was a cost to Mr S in achieving what he wanted given the circumstances.

Mr S has made the point that the SJP adviser could have reduced or discounted the fee – it was within their gift. I accept the adviser might have had discretion to do so. But that was theirs or SJP's decision to make. They were not obligated to do so. In this case, the costs were the typical SJP charges. It disclosed them, and Mr S went ahead knowing what the costs were. So, I don't think SJP acted unfairly or unreasonably.

Conclusion

SJP should not have charged Mr S an ongoing advice fee in 2015 given the circumstances – that was unfair. But its advice in 2015, given Mr S' particular circumstances and objectives was suitable. SJP clearly disclosed the costs of Mr S achieving what he wanted, and it considered and explained the option Mr S had of moving to drawdown and waiting to access his funds until nearer the expiry of his mortgage term to avoid him paying an immediate EWC. So, I think Mr S had all the information he needed to make an informed decision. In these circumstances, and for the reasons I have explained above, I don't think it is fair to award a refund, whether wholly or in part, of the EWC Mr S paid.

I've thought about whether a distress and inconvenience award is fair in this case. But in the circumstances, I don't think it is warranted. SJP's failing was to charge Mr S a £10 ongoing advice fee. I don't think this caused Mr S any material distress or inconvenience. And to Mr S' representative's point about SJP's failure to provide a response to his complaint within eight weeks – given Mr S chose to have a representative take care of matters, to a greater extent they would have shouldered any inconvenience. So, overall, I'm satisfied no award is warranted here.

Putting things right

I think it was unfair of SJP to charge Mr S an ongoing advice fee given the specific circumstances of this case. So, SJP should do the following:

- Refund the ongoing advice fee charged in 2015.
- Had the fee not been deducted from the plan, it would have formed part of Mr S' taxable income when he withdrew his fund. So, the compensation should be notionally reduced to allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it is not a payment of tax to HMRC, so Mr S won't be able to reclaim any of the reduction after compensation is paid.
- The notional allowance should be calculated using Mr S' actual marginal rate of tax at that point.
- Add interest on the net amount at a rate of 8% simple from the date of payment of the final withdrawal, to the date of my final decision.
- Pay the amount directly to Mr S and provide him with details of the calculation in a clear, simple format.

If payment of compensation is not made within 28 days of SJP receiving Mr S acceptance of my final decision, interest must be added to the compensation at the rate of 8% per year simple from the date of my final decision to the date of payment.

Income tax may be payable on any interest paid. If SJP consider that it's required by HMRC to deduct income tax from that interest, it should tell Mr S how much it's taken off. SJP should give Mr S a tax deduction certificate in respect of interest if he asks for one, so he can reclaim the tax on interest from HMRC if appropriate.

My final decision

For the reasons above, I've decided to uphold this complaint, in part, and I instruct St. James's Place Wealth Management Plc to put things right in line with the approach above. I make no other award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 30 September 2025.

Paul Featherstone

Ombudsman