DRN-5578637

The complaint

Mr C is unhappy with St. James's Place Wealth Management Plc (SJP)'s advice not to draw down any further income from his pension until he needed to spend it. He says this was tax inefficient as it's more likely that income he does take in future will be taxed at the higher rate of 40%.

What happened

Mr C's had started his SJP retirement account in 2016, when he drew out the maximum amount of tax-free cash after his 55th birthday. The plan was then in flexible drawdown, and worth around £1.1 million by 2021. He had been granted Fixed Protection 2014 from the Lifetime Allowance (LTA).

Mr C says that from the moment he hit age 60 in late 2021, he was asking his SJP adviser about the need to supplement his savings with pension income once he sold his business on 1 June 2022. From that point onwards, he would remain a consultant to the business. He and his wife also continued to look after animals at home, which incurred expensive vet bills.

In the tax year to April 2023 Mr C received final dividends from his business totalling about £10,000, which used up most of his tax-free personal allowance. In the latter part of 2022 he asked SJP about the possibility of drawing down another £40,000 of income which would mean he remained in the 20% tax band.

At around the same time, he was discussing with SJP a potential transfer of his former employer's defined benefit (DB) pension, which at the time he thought would be favourable. So, he agrees at that point he was *"prepared to leave things in abeyance"* regarding the £40,000 withdrawal, while recommendations on the transfer were formulated.
SJP completed a 'fact find', which recorded that Mr C owned property and land worth £2.6 million and cash savings of over £800,000, which were going towards their living expenses (including vet costs). His DB pension had a transfer value of around £282,000.

He and his wife were in good health. Mrs C was about ten years younger than him and still earning about £3,900 monthly net. Her pension provision was much smaller at about £40,000. Their joint monthly expenditure (including bills for a second property) was about £5,450, and they had no debts.

The fact find noted that Mr C was due to receive the full state pension from age 67 in late 2028, and in the meantime *"He is living off his cash reserve savings for the short term, whilst he decides what funds to take from his pensions."*

At the beginning of 2023 Mr C returned to his request to start pension withdrawals, saying on 16 January: *"I had originally planned to start drawing down pension from the start of the next financial year. However I'm not sure if that is making the best use of any allowances I have for 2022/3…do we simply draw down the balance between what we've taken* [as dividends] *and the higher rate threshold?"*

The adviser responded that he would normally agree with using pension income to fill up the personal allowance, but *"…would not see the need to draw up to the higher rate threshold level…The reason for this is that we have spoken about a split approach ie £2,500 from pension per month and £2,500 from cash. The £2,500pm from pension would gross up to £37,500 and is still well within the basic rate tax band. Also with the market where it currently is this uses less of the pension fund than if we drew down an amount to take you near £50,000."*

This appears, therefore, to be a reference to not selling too many units in Mr C's pension funds when prices were perceived to be low. (The adviser later referred to the pension's value being lower than one year previously.)

Mr C responded on 20 January with a reminder to the adviser of just how much he was now spending on vet bills (£3,000pm, plus items such as food and paid assistance), now that he no longer had an earned income. He argued to the adviser:

"A pension at £50k a year would deliver a net monthly figure of £3543 after tax and given the above that's where it feels like it needs to be. It represents 4% of the fund and given a fairer wind than we have at the moment the fund should be able to recover. However I'll give the whole matter some more thought and we'll reconvene. In conclusion it does seem quite annoying that we're unable to use this year's allowances (or indeed do anything) because of the delays [in getting information from the DB pension scheme] *… Obviously that isn't aimed at you guys. They've been very slow."*

Mr C added on 1 February, *"I stopped work last June and yet don't seem to have any access to my pension and am facing the position where I cannot use my allowances and lower tax threshold for 22/23. St James' Place charges per year seem almost the same as the amount per annum I'm being advised to take."*

However, the adviser remained of the view that it was overall more tax-efficient not to withdraw from the pension. He stated in a message that this was because of how much cash Mr C already held and because pensions weren't subject to inheritance tax (IHT). However, in a follow up reply on 3 February Mr C suggested the actual reason he had been given was somewhat different (with my emphasis in bold):

"If I'd known this business with [DB scheme] *was going to be like 'wading through treacle' I wouldn't have done it. I certainly wouldn't have done it if I'd known it would delay access to my pension for this long and that I wouldn't be able to make use of my tax allowances for 2022/23. You asked me to hold off drawing down anything until after my birthday in November last year* ***so that it created the right impression*** *and I agreed. In fact I thought I'd leave it until the end of the financial year but then had a re-think given the tax allowances…*

I understand the tax benefits around inheritance with regard to the pension but [daughter] *is only 12 years old. It'll be great if there's something eventually for her to inherit but with all due respect to her we didn't invest all this money with you for that purpose. … I'm sorry to repeat myself again but I see no value in using up my savings to be left with nothing but a huge pension because I won't be able to get it out without paying a lot of tax."*

This appears to be a reference to it being much harder for SJP to demonstrate that there is a case for transferring from the DB pension scheme, if Mr C was already in need of pension income (which could be satisfied by drawing the pension directly from that scheme).

Mr C added on 16 March, *"I simply cannot agree with your suggested financial strategy of running down my savings first. At the same time I want to manage the pension prudently* *taking your advice on board. We are running out of time for this financial year and this is a bee in my bonnet that won't go away. I didn't get the impression talking to the guy yesterday that it* [withdrawing income] *would particularly bother* [the DB scheme]*. I'm looking for £20k net to take the pressure off of our savings."*

He chased the adviser on 22 March, asking *"Btw* [by the way] *any news on getting me some money before the tax year expires?"*

The adviser revisited Mr C's request and responded on 28 March: *"I've had a long hard think about this again and given the rise in interest rates coupled with the size of your savings, this means that the interest received will be within your Personal Allowance ie if we take money out of pension it will become taxable thus defeating the idea. We need to get the money across from* [DB scheme] *and then we can set up a scheduled withdrawal programme for you."*

And on 31 March: *"I have confirmed to you that once the money is across from* [DB scheme] *we can initiate the income that you want i.e. some from pension and some from savings. My point regarding interest rates is with regard to your Personal Allowance as this is the only thing you would lose before April 5th. As you have received £10,000 from* [dividends] *this equates to using your Personal Allowance…You are correct that the lower rate tax hold is £50,000 and therefore you have the ability to access this after April 5th i.e. it is not time critical. £50,000 is £4,166pm which is consistent with the split we spoke about between using pension income and savings."*

The adviser's comments therefore give the impression he was happy for Mr C to withdraw income from the pension once the DB transfer was received (which was now going to be in 2023-24), but that he wasn't losing out on not utilising the rest of his basic rate tax band in 2022-23. Clearly Mr C's position differs on whether that also represents a loss to him.

Mr C subsequently became reluctant to transfer the DB pension at all. Remaining dissatisfied about the lack of withdrawals for 2022-23, he wrote directly to the SJP liaison address on 14 April, saying:

"In fairness my advisor has said that he will set up a pipelined monthly pension 'once the transfer has taken place.' There are two things wrong with that:
a. It sounds conditional
b. Despite flagging it repeatedly I have now missed the opportunity to draw income in year 22/23 using the lower tax thresholds. I had only drawn £10k from my former company and thus had £40k to use. I wanted to draw £20k and feel that I have been effectively blocked from doing so. That has given me a loss since that year is no longer recoverable."

SJP treated the matter as a complaint. In its final response some five months later, it said that his cash savings were higher than he required to maintain his lifestyle. So it thought for IHT reasons, the adviser's recommendation not to draw down from the pension (other than to fill his personal allowance, which wasn't available for 2022-23 anyway) was correct. SJP also offered Mr C £300 for the delay in responding to his complaint.

Mr C didn't agree with SJP's response. By this point he had already moved to a new adviser outside SJP in August 2023. He has agreed he was *"reluctantly prepared to go along with leaving the pension alone initially"* – and has said that his disagreement with the adviser *"started as almost light hearted banter…but increasingly I started to get frustrated, worried and angry that he wasn't listening to me."* He referred to two aspects which changed his mind:

1. A struggle with mounting vet bills (which I note he did highlight to the adviser on 20 January 2023).
2. A point that I haven't seen evidence of Mr C highlighting to the adviser: *"Our desire to upgrade either our house, grazing land or both…We have now found land we wish to purchase at a cost of £400k which will rather blow a large hole in our savings. [Adviser] knew this was a possibility."*

Mr C his complaint to this service for investigation, telling us his concern was that once his savings had been depleted he and his wife would never be able to draw down sufficient sums to live off without paying higher rate income tax. He told our Investigator that he had made six or seven written requests, and other verbal requests, for the adviser to facilitate his withdrawal and had been 'stonewalled' – so the £200 additional compensation our Investigator initially recommended felt like an insult.

I requested further information from Mr C, to establish how much of his tax bands he has been habitually using up since the 2022/23 tax year. He explained that he subsequently chose to draw the scheme pension directly from his DB scheme during the 2023/24 tax year, and those payments were backdated to his age 60, resulting in £14,961 gross. Because the interest on his considerable savings was also £12,220 in that tax year, he chose to withdraw an additional £17,000 gross from his personal pension. That gave him a total income of £44,181. I note for comparison that the combined standard personal allowance and basic rate band for that tax year was £50,270.

Mr C further explained that in 2024/25, he drew down £29,210 gross from his personal pension and will receive £8,064 gross from the DB scheme. When added to the interest he received from his savings (which he underestimated, and amounted to £15,487), he received total income of £52,761. He therefore mistakenly exceeded this £50,270 threshold (which was unchanged from 2023/24).

I issued a provisional decision to uphold this complaint on 25 April 2025. In summary, I said that I wasn't surprised the SJP adviser recommended that Mr C hold on to pension assets for as long as possible. But, such was the level of Mr and Mrs C's cash savings I thought he'd made a valid point that a later transition from relying on cash to relying on his pension could well push him into the higher rate tax band. There was a suggestion in the communications at the time that the need to secure the transfer of Mr C's DB pension was dictating what the adviser was willing to do with arranging withdrawals of income (and when) – when that shouldn't have made a difference.

At the very least, and whether SJP had been willing to change its advice or not, I thought the adviser ought to have made Mr C aware that he could give a direct instruction to SJP (as his pension provider) that he wanted to take a certain level of income if he wished – and Mr C would likely then have given that instruction. I didn't agree that Mr C would ultimately have taken £40,000 from the pension during 2022/23, but I thought he'd likely have taken £20,000. I set out a proposal for fair compensation based on any higher rate tax Mr C suffers this tax year if he withdraws that additional amount from his pension when he is already using up his basic rate tax band.

Mr C agreed with my provisional decision and clarified that at the time of the events complained about, he and Mrs C's monthly outgoings had been closer to £10,000 (now reduced to £5-6,000). He thought the information recorded by the adviser was out of date, as his wife was no longer earning the £3,900 per month recorded.

Mr C also confirmed that in the current (2025/26) tax year, he expects to receive a DB pension of £8,060 and still have a personal allowance of £12,570. His interest-bearing savings have now reduced to about £250,000 in total as a result of purchasing further land,

and are likely to produce interest in the region of £10,000 (at today's rates). He also clarified that he's moved his pension away from SJP.

In response to the provisional decision, SJP wanted to know if Mr C had filed a tax return for 2022/23 so it could see how much income he had left to take in the basic rate tax band. Mr C explained that he didn't need to fill in a tax return that year. SJP responded to say that it thought a tax return was required if Mr C was receiving substantial income from savings. But either way it would like confirmation of Mr C's total taxable income for that year.

Despite asking for this information, I note that SJP maintains *"we believe the advice* [Mr C] *received was suitable and if other funds are available, they should be used first before receiving a taxable income from a pension."*

The deadline for responding to my provisional decision has now passed and for the reasons I'll explain below, I don't consider it is necessary to see written evidence of Mr C's total taxable income (for 2022/23) to make a decision on this complaint.

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.

Financial advisers do commonly recommend that individuals spend surplus cash they have before accessing a pension, generally for tax reasons. Not only is there the prospect in some cases of the pension holder paying too much income tax as a result, but also there was a favourable IHT position if funds remained in a pension – compared with being taken out and falling into the individual's estate. Even though the government is proposing changing the position with IHT - which wasn't known at the time SJP was advising Mr C - it was also (and remains) the case) that a beneficiary of a pension doesn't pay income tax if they inherit the pension fund before the pension holder's 75th birthday.

Mr C did have a considerable amount of cash savings, and because of the value of their properties his estate (or his wife's, when he passed his allowances on to her) would likely pay inheritance tax. So I'm not surprised that the SJP adviser initially made the recommendations he did. In response to my provisional decision SJP appears to be confirming that it would not recommend a client did anything different to this. I expect most of the time, SJP would not need to. But this case is notable for Mr (and Mrs) C holding a high amount of cash but also having a high level of outgoings.

I made my provisional decision on the basis of the lower disclosed outgoings (and Mrs C's income) that was recorded by SJP at the time. I remain of the view that this is the appropriate way to gauge whether the advice was suitable, as I'm not in a position to tell why any figures may not have been correct. Fact finds are only updated at intervals and it may be that a change in Mrs C's income position had been overlooked (or that she was expected to be working again soon). Nevertheless, the advice in this case took place against a rising concern from Mr C that their monthly expenses were too high, which is something I'd already taken into account in my provisional decision.

I'll set out again below why I thought Mr C's position warranted more considered recommendations from the adviser, or at least more signposting that Mr C could go to SJP's administration department and instruct a withdrawal himself – given all the circumstances.

It's a notable feature of this case that SJP was in the process of securing a transfer from Mr C's DB scheme. And one of the selling points of its recommendation to do that was that drawdown would allow him to withdraw his money flexibly in the most tax efficient way possible. Ironically, that was what Mr C was seeking to do here. He felt that his cash savings were ***so*** extensive that if he became accustomed to only taking his income from those, once the cash was used up his income requirement from the pension would then push him into the higher rate tax band. Whilst I can understand the adviser's advice, I also don't think Mr C's argument was without merit either.

Withdrawing part (or all) of the basic rate tax band as income from his pension would make Mr C's cash savings last longer and reduce the prospect of him needing income in future that would take him into the higher rate band. I also think it's relevant that his wife was about ten years younger than him. As the inheritance tax charge would only happen on the second death, this would most likely give a considerable time for Mr (and Mrs) C to use up their savings before it became an issue.

If necessary, Mrs C could later choose – on Mr C's likely earlier death – to reduce the withdrawals from the pension if there were still sufficient cash reserves that she would rather spend first. But even that point would likely be many years away: Mr C was only in his early sixties, had lost his main source of earned income, and I think it was fair for him to be concerned about the rate of depletion of savings at the time. Notwithstanding that it can be tax-efficient to defer making withdrawals if there are assets outside the pension to use up, the likely purpose of establishing the pension originally was to provide income in retirement – which was the position Mr C was now in. So, I also think there is merit in the approach Mr C wanted to take of achieving a more even split between pension and investment income.

I'm not saying that the adviser should necessarily have changed his recommendation in response to a request from Mr C. Our Investigator's comments about an adviser reasonably needing to believe that their recommendation is in the client's best interests, are relevant here. But it seems to me that the adviser was in fact already open to the idea of Mr C drawing some income from the pension (within the basic rate tax band) and combining this with using up his savings. I don't think that would have been unsuitable advice either.

What concerns me here is that the adviser appears to have been trying to delay Mr C starting to do this because it might alter the viability of transferring the DB pension. I don't think the "tail should have been wagging the dog" in this way. Mr C did have a requirement for pension income which, whether the adviser recommended it or not, he would likely always have gone ahead with once the DB transfer was complete. So, that raises the question of whether it would have been a viable (and less risky) option for him to draw that baseline of income directly from the DB scheme – and only take additional income from the SJP plan as necessary. That is what Mr C has now resolved to do, and I can see why.

If SJP hadn't linked the decision to take income from the SJP plan with needing to get the DB transfer completed first, I find it likely that he would have taken (and the adviser would have been willing to assist him with taking) some further income from SJP during 2022-23. But even if the adviser had remained reluctant to advise Mr C to do this, I agree with our Investigator that he could have signposted to Mr C that he had the option to instruct SJP (as his pension provider) directly.

I say this because, whilst Mr C has admitted that the discussions about drawing an income were light-hearted originally, he clearly became more insistent that was what he wanted to do – and in good time before the end of March 2023. I can't say from the evidence we have that the adviser should have known about any concrete plan for Mr C to buy further property or land, but Mr C did make his position clear about the high outgoings he was expecting because of the animals they cared for. Given that it benefits SJP in terms of management fees for Mr C's pot to remain invested, I think the adviser should have been more careful to avoid the appearance of putting barriers in the way of Mr C doing what he clearly wanted to do – even though I accept that may not have been the adviser's intention.

Had the adviser explained that Mr C had the right to instruct SJP directly on the level of withdrawals he wanted to make, I think his feeling on this point was strong enough for him to proceed to give that instruction. But it does seem to me that Mr C respected the adviser's recommendation not to withdraw too much income – either because fund prices were lower than the previous year; or because he wanted to balance this out with investment income; or he wanted to avoid being caught by higher rate tax on his (increasing) savings interest; or a combination of these things. So his eventual proposal was that he would only take £20,000.

Therefore, I've decided that SJP should be responsible for any additional tax charge Mr C will suffer if his personal pension withdrawals go into the higher rate tax band (up to an additional £20,000 of withdrawals) in the current (2025/6) tax year.

Putting things right

My aim in awarding fair compensation is to put Mr C back into the same position, after tax, as if he had withdrawn up to an additional £20,000 from his pension during 2022-23. Mr C has adequately demonstrated that if he wanted to draw that £20,000 now, he would incur higher rate tax – because he is now arranging about £50,000 of income annually from both his pensions and interest on deposits.

SJP says that Mr C needs to evidence that he had scope to take up to an additional £20,000 from his pension in 2022/23, but I consider Mr C has evidenced this. SJP already knew enough about his financial circumstances during 2022/23 for it to be obvious that he had the scope to do so: that was what the whole conversation was about. As I've said above, SJP knew that Mr C's earned income only used up most of his personal allowance. He had considerable savings of £800,000, which although smaller now, are currently earning about 1% below the Bank of England (BoE) base rate.

During 2022/23 the BoE rate had risen steadily from 0.75% to 4%. Even making the fairly generous assumption of an average savings interest of 2% on £850,000 for that year would only produce further income of £17,000. (That looks to be an overstatement because I note Mr C has said that during 2023/24 he only earned savings interest of £12,220.) The basic rate tax band was £37,700 wide in 2022/23. So there is logic to Mr C's contemporaneous proposal to withdraw £20,000 from the pension. So I don't need to see further evidence to substantiate that.

During 2025-26, it looks that Mr C will be able to withdraw an amount of income from his personal pension without incurring higher rate tax of "D", where D = A – B – C, and

A = £50,270 (the personal allowance and basic rate band combined) *minus*
B = £8,060 (his DB pension), *minus*
C = The total amount of savings income he earns during that tax year

It was presumably already Mr C's intention to withdraw that sum of "D" from his personal pension. But it doesn't look that the interest payment on the bulk of Mr C's savings (with NS&I) will be paid until 1 April 2026, and as interest rates are expected to continue falling during the year it isn't possible to currently quantify what "C" would likely be. (For example last year, Mr C mistakenly withdrew nearly £2,500 too much from his personal pension and incurred higher-rate tax.)

Assuming Mr C was able to target his existing level of withdrawal this year so that B + C + D = £50,270, I think fair redress would be that he can also withdraw up to an additional £20,000 with SJP reimbursing him for the difference between the basic and higher income tax rates (20%) on that additional withdrawal.

In my view it will only be possible for SJP to provide Mr C with that compensation after he's chosen to make any withdrawals he wishes to make for the 2025/26 tax year, and all of the interest payments he's due to receive and any inflationary uplift to his DB pension are known. SJP should then take the following steps:

1. Calculate the amount of (B + C + D) – A, in other words the amount by which his total income from the three sources above extends into the higher rate tax band.
2. Limit the result of (1) to a maximum of £20,000
3. Calculate 20% of (2)
4. Pay the result of (3) to Mr C in cash.

I need to make Mr C aware that SJP will be entitled to ask for evidence of what his income received from B, C and D was. Without that evidence it won't be fair to expect it to provide compensation. And it may be necessary to wait until 1 April 2026 to do this, if that is when his interest is paid by NS&I. To calculate figures based on his current bank balance and NS&I interest rates may result in overcompensation, and I don't think that would be fair.

Payment slips from the institutions involved will be sufficient to evidence this. For the avoidance of doubt I don't agree that SJP can wait any further than the end of the current tax year, for example for Mr C to fill in a tax return, as not only would this cause further delay but I can't tell that it would be necessary in light of the reduced amount of savings interest.

I also consider that the Investigator's recommendation was fair and reasonable for SJP to pay Mr C a further £200 for the distress and inconvenience caused in not making him aware that he could instruct this withdrawal to be made directly.

SJP's existing offer of £300 was for a delay in responding to Mr C's complaint. The quality of a firm's complaint handling isn't one of the activities that I have the power to consider under the Dispute Resolution (DISP) section of the FCA handbook. SJP hasn't confirmed in response to this provisional decision whether it is still prepared to pay this sum in addition to Mr C, so that's a matter he would need to discuss with SJP directly. It isn't a part of the settlement that I have any power to mediate.

My final decision

I uphold Mr C's complaint and require St. James's Place Wealth Management Plc to calculate and pay him compensation as set out in the "Putting things right" section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 19 June 2025.

Gideon Moore
Ombudsman