

The complaint

Mr B complains that following advice to invest a lump sum into his pension plan in 2023, he didn't receive the amount of tax relief he expected after the recommendation from St. James's Place Wealth Management Plc (SJP). He would like the additional higher rate tax relief he didn't receive to be paid to him.

What happened

In 2022 Mr B received a payment from the sale of some personal company shares. At that time he held two (workplace) pension plans. He met with an adviser with SJP with a view to investing a lump sum from some of the proceeds of the share sale into a new personal pension plan. He said it was confirmed by the adviser that he would receive 40% tax relief from making the contribution – 20% at source and the other 20% should be claimed when completing his self-assessment tax return.

Mr B says that when he received a copy of a tax calculation from his accountant he saw that it didn't include the full additional tax relief he expected. He was told that his total annual income meant that he paid the majority of tax at the basic rate of 20% – therefore he was only entitled to claim a lesser amount of further relief at the higher rate.

Mr B says he contacted SJP's adviser who suggested it was an error and referred Mr B's response to his complaints team in November 2023. But by June 2024 Mr B still hadn't received a reply so he brought his complaint to us. He says that during that time – because it was agreed he wouldn't contact his adviser until the matter was settled, he'd been unable to make any further financial planning and hadn't taken up the offer of an annual review. He further believed that more appropriate advice would have been to invest £22,500 over three consecutive tax years.

SJP then issued a final response. It said that:

- When Mr B submitted a tax return as evidence it showed that tax relief at 40% was only available on £20,028 of his income – which was relief of £4,005.60. Therefore Mr B didn't receive tax relief of 40% on his whole pension contribution.
- The adviser accepted he may not have explained this as clearly as he should have done and apologised for that lack of clarity. However it was clear that Mr B's tax situation meant he wasn't entitled to the full 40% tax relief.
- It didn't accept that its recommendation should have been to invest £22,500 over three consecutive years as this wouldn't have met Mr B's objective of maximizing contributions to his pension.
- The funds would have been uninvested for up to two years and if future circumstances and regulations had changed it might not have been possible to make the additional contributions.
- It wouldn't be compensating Mr B for the loss of the additional tax relief, but did offer £150 as compensation to reflect the distress and inconvenience of bringing the matter to its attention.

One of our investigators looked into the matter. He said:

- Unused pension allowances from previous years had been utilised to allow Mr B to contribute around 100% of his income in the 2022/2023 tax year. But tax relief is only granted on the year the contribution is made – and then only to the extent of any higher rate tax that is paid. In this case Mr B only seemingly paid higher rate tax on income of £20,028 based on the tax return that was completed for him – so he was only entitled to additional tax relief of 20% on that amount.
- It was clear that the concept of the higher rate tax relief was not adequately explained to Mr B – and although he didn't agree that spreading the contributions over a three year period would have met Mr B's objectives – he thought that by making a payments in February 2023 and another shortly after 6 April 2023 (the new tax year), Mr B could have obtained a similar amount of higher tax relief the following year which would most likely have outweighed any investment growth he would have lost over that two month period.
- But he thought a “bed and SIPP” option would have solved the problem. This was an option – often used by SJP in his experience – whereby the entire pension contribution could have been invested into a general investment account (GIA), thereby benefitting from the same investment strategy as the pension plan, with an immediate contribution equivalent to the higher rate tax liability being paid into the pension plan. The same process could be repeated each tax year to benefit from the higher rate tax relief until the GIA fund was exhausted.
- He thought that, as Mr B still had unused pension tax relief from previous years, he would have benefitted from delaying some of his contributions into the pension plan until future tax years. He therefore thought that SJP ought to refund the difference between the higher rate tax relief Mr B had already received and the additional 20% he expected to receive.
- He recommended that SJP pay Mr B £250 for the distress and inconvenience caused by the lack of clarity in its information over an extended period.

SJP didn't agree. It said that:

- It had previously said that Mr B hadn't suffered a financial loss as a result of its advice – and that the advice met his objective of increasing his future retirement provision through a single contribution to a new pension plan. The outcome was that Mr B simply hadn't received as much higher rate tax relief as he expected.
- In fact Mr B had received an overall rate of tax relief of 26% and had benefitted from potential immediate investment growth by investing the entire contribution in February 2023 rather than over future tax years.
- If Mr B wished to use “carry forward” allowances he should consider using the unused 2022/2023 allowance first. And it couldn't have been foreseen that the annual allowance for 2023/2024 would increase to £60,000.
- But in hindsight it may have been beneficial for Mr B to have used his remaining allowance for the 2019/2020 tax year (which would have been lost in the 2023/2024 tax year) and invested £54,934 in the 2022/2023 tax year and £12,978 the following year – which would have likely attracted 40% tax relief. So in order to resolve the issue it would consider paying Mr B an additional 20% of the second lump sum payment (£2,595.60).

Mr B didn't accept SJP's offer and questioned why, after a year of not resolving his complaint and causing him further financial issues, it had now accepted it may have made a mistake but would not follow the investigator's recommendation. He asked for his complaint to be referred to an ombudsman – so it was passed to me to review.

My provisional decision

In my provisional decision I said that SJP's offer was a fair and reasonable resolution to Mr B's complaint. I made the following points in support of my conclusion:

- Based on the evidence I'd seen it was clear that SJP's adviser's explanation of how the 40% tax relief was unclear and ultimately incorrect – so it wasn't unreasonable for Mr B to conclude he should receive an additional 20% tax relief through his self-assessment tax return. However, the tax relief Mr B received was correct, so it wouldn't be fair to ask SJP to simply refund any shortfall as that would put Mr B in a better position than he ought now to be in. But I did have to consider if Mr B or SJP would have acted differently if the adviser had provided correct information.
- Both Mr B and our investigator thought the single premium pension contribution could have been invested in "instalments" over consecutive tax years in order to achieve the maximum tax relief available. But I thought that suggestion was with the benefit of hindsight and didn't take account of Mr B's main objective when he decided to invest.
- Mr B's main consideration was to invest a single premium contribution to increase his pension provision. Of course the adviser needed to be aware of things such as previous unused tax relief and annual allowances in order to make his recommendation, but his primary focus was to help Mr B invest the maximum amount possible within any restrictive rules. Mr B would ordinarily receive 20% tax relief in any case and would be investing in a tax efficient environment. Benefits such as tax efficiency and investment growth might not have been maximised if the contributions had been "drip fed" or spread over a number of years in less tax advantageous investment vehicles.
- So it was difficult to conclude the adviser's recommendation was unsuitable based on the objectives he was presented with. It was also unclear what alternative path Mr B might have taken if he'd been given the correct information about the tax relief as it was possible the benefits he received from immediate investment might have outweighed those of investing gradually. I noted that some of the unused tax relief would have "fallen away" the following tax year meaning it couldn't be utilised.
- But in any case, SJP thought it might have been more advisable for it to have recommended that Mr B made contributions either side of the 2022/2023 tax year to utilise the carry forward allowance that was due to be "lost", and which would have given Mr B some further higher rate tax relief. If offered to pay Mr B that additional sum of £2,595.60. I thought that was a fair and reasonable offer and that it should pay that sum along with £250 compensation for the distress and inconvenience caused.
- I also considered Mr B's claim that he missed an annual review in 2024 because he was told not to contact his adviser while his complaint was investigated – which caused him further financial loss because of actions he wanted to discuss but wasn't able to. But I hadn't seen any evidence to support that claim and had seen that SJP contacted Mr B to arrange a review – which he declined. So I couldn't reasonably say he was prevented from undertaking his 2024 annual review.

Responses to the provisional decision

SJP accepted my provisional decision, but Mr B didn't – making the following points in response:

- After 18 months this matter had still not been resolved, and he had spent a lot of time dealing with the complaints process and waiting for a response. He didn't think SJP had dealt with his complaint promptly and fairly and thought for it to only offer £150 compensation at the end was insufficient.
- SJP's adviser was acting for, and supported by, a large company with lots of back office support and help. It wasn't reasonable to simply suggest the adviser should have explained things better – especially when considering the significant amount of commission that was being paid – which should have led to the correct advice and information being given.
- Four other colleagues who took the same course of action following the sale of the company shares all successfully obtained the full 40% tax relief through their advisers. He suggested that his adviser had invested his funds through one single contribution to maximise the commission payable.
- He thought it was important to establish the cause of his complaint which was that he was unable to receive the full 40% tax relief. He didn't think it was fair to link this to whether the investment may have risen or not because investment performance isn't guaranteed. He thought that if his investment was to have fallen in value SJP's decision would have remained the same. He thought it wasn't necessarily best advice to invest a single lump sum if, for example, that didn't maximise the tax benefit that was available (40% in this case).
- He didn't think the reference to unused allowances and the increase in the annual allowance were relevant because he had sufficient unused allowance anyway, and his earnings were expected to remain high in subsequent years – his continued employment was under no threat.
- Both he and the investigator thought that advice to wait until the new tax to invest was better tax planning, and he would have been happy with the alternative "bed and SIPP" option, although this was never discussed or considered by SJP.
- He was disappointed that the investigator thought the redress should be calculated by spreading the investment over two years and not three – although he accepted that outcome as fair and reasonable. But he thought SJP's technical experts had then been able to present a number of hypothetical situations and come up with an alternative offer which reduced its liability. He thought it was possible to "*play with the figures*" and come up with any number of outcomes and figures, but noted SJP's offer was lower than both the shortfall figure he'd calculated, and the recommendation put forward by the investigator.
- So he thought the fairest resolution was to either honour the investigator's recommendation or to meet halfway between that recommendation and SJP's offer.

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.

And having carefully considered Mr B's further submissions and his suggestion for an alternative compensation resolution, I see no reason to depart from my provisional findings. I know this outcome will disappoint Mr B and I've seen the strength of his feelings about this matter within the submissions that he's made, but overall I think SJP's offer is fair in the

circumstances – so I'll explain my final reasons.

It isn't in dispute that SJP's adviser didn't correctly or clearly explain the concept of the 40% tax relief. I'm persuaded that, on the basis of what he was told, it wasn't unreasonable for Mr B to think he should be entitled to a full further 20% tax relief on his pension contribution through his self-assessment tax return.

But I'm also satisfied that, having looked at Mr B's accountant's self-assessment calculation, it showed that he wasn't eligible for the full additional 20% of tax relief once his complete tax and income picture was set out. So Mr B wasn't eligible for that extra amount, and I'm satisfied the tax position as set out by the accountant was correct, so I can't reasonably say that SJP should refund the shortfall purely as a result of its misinformation. That would be to put Mr B in a more advantageous position that he ought to now be in.

But Mr B's complaint is that SJP should have advised him differently, or it should have presented him with other options which would have allowed him to make choices which would have maximised the tax relief he could obtain. So that's what I'm considering here – whether either party should have taken or advised alternative actions which were in Mr B's interests – but in line with his overall objectives.

What other course of action could have been taken?

There have been a number of alternative recommendations put forward by all parties in this case. Mr B told us that he thought SJP ought to have split his investment over three consecutive tax years which would have allowed him to claim the maximum tax relief of around an additional £9,500. The investigator considered the same solution but only splitting the investment over two consecutive tax years. He also considered the use of a separate GIA invested in the same funds as those used in the SIPP as a "bed and SIPP" proposal. This would have allowed contributions to be made to the SIPP each year using any annual and previous years unused allowances to ensure all the higher rate tax relief was obtained over time.

I have thought carefully about these suggestions as well as Mr B's assertion that any number of other alternatives – which set out a different shortfall in the tax relief obtainable – could be put forward by "*playing with the figures and assumptions*." But I think that's the difficulty here because all of these proposals are with the benefit of hindsight and based on now knowing that Mr B didn't receive the higher rate tax relief he was expecting.

So I have to consider the situation faced by the adviser when he met with Mr B, and in particular the objectives that were established at the time and formed the basis of the recommendation. SJP's suitability report of 12 January 2023 set out those objectives. It said "*generally, I would recommend you maximise your personal contributions otherwise you may have a shortfall in your retirement planning when you come to retire in the future. I have referred you to the illustration which gives a projection of the pension available.*"

My recommendation is based on your needs and objectives as set out in Part 1 of this report and my specific reasons for the recommendation are set out below.

The SJP Retirement Account will allow you to accumulate funds for future benefits. In line with your plans for retirement you can access these funds at age 65."

So I think it was clear that the adviser recommended the course of action he thought best for Mr B's main objective of increasing his retirement provision by making the maximum pension

contribution allowable according to the rules at the time. I'm mindful of course that the adviser needed to take tax efficiency into account of any pension recommendation, but I think there was some tax efficiency already from the 20% tax relief on the pension contribution. Additional tax relief of up to a further 20% was another benefit that Mr B was expecting from his contribution – and clearly the adviser ought to have been much clearer on how this would have worked in Mr B's situation. But I think the principal objective was to invest the maximum contribution allowable at the time.

There were also other reasons to support the idea that the recommendation wasn't unreasonable. Mr B had around eight years before it was noted he might wish to access his benefits, and investing a lump sum immediately gave him the potential to maximise the investment growth from his funds. Of course Mr B is right to say that investment growth isn't guaranteed and could fall as well as rise but the additional time the money was invested – in a tax efficient environment – gave him the *potential* for growth he wouldn't have had if his money had been "drip fed" from a GIA or from his own savings resources. And this additional potential growth might have led to a greater fund at retirement thereby providing a greater 25% tax free lump sum as part of Mr B's retirement benefits.

Of course it's possible this might not have been the case, but I believe these were additional factors which needed to be taken into account when the adviser made his recommendation. SJP had noted that Mr B's "*ultimate objective for the investment is capital growth*", so I think it was reasonable for the adviser to base his recommendation on that main objective.

The other suggestions from Mr B of how SJP should have set out its recommendation are, even with the benefit of hindsight, not unreasonable. But, in my view – based on the objectives it noted in its suitability report – neither was SJP's recommendation. It was based on Mr B's objectives of maximising his pension contributions and obtaining capital growth, and I'm not persuaded that the recommendation it set out didn't meet that objective nor can I reasonably conclude that it was unsuitable in the circumstances.

SJP's subsequent offer

During the complaint process SJP reviewed its advice. It subsequently found that some unused carry forward allowance from the 2019/2020 tax year would have been lost in the 2022/2023 tax year – so it thought that the adviser could have recommended that some of the contribution (£12,978) be invested in that new tax year. This would only have involved a delay of some two months, so wouldn't have significantly affected Mr B's overall objective of the potential for maximum investment growth. This meant Mr B would have received an additional £2,595.60 of tax relief.

However Mr B believed that SJP was simply trying to minimise its liability, and he demonstrated that "straddling" the tax years with equal contributions would have given him even more tax relief. He thought it was possible to reach any number of financial outcomes this way. So I can understand Mr B's frustrations here and I have thought carefully about SJP's offer.

But I think the offer is fair and reasonable because it introduces an element of contributing across consecutive tax years to utilise unused tax relief which would otherwise have been lost, but it doesn't detract from the reason behind the original recommendation which was to achieve "*capital growth*" from Mr B's pension contribution. In my view SJP's offer builds on the principal objective but incorporates the idea of investing either side of the tax year to include allowances which might otherwise have been lost.

I have also considered Mr B's suggestion of a "halfway house" resolution between the investigator's recommended redress and SJP's offer. But I think SJP's offer puts Mr B in the position he would now be in had its initial recommendation incorporated the soon to be lost tax allowance, so it wouldn't be fair for me to make an award on the basis of a figure provide by Mr B which isn't supported by what should have happened.

Mr B's missed annual review and financial planning opportunities

Mr B has said that because SJP took a long time to consider his complaint he missed an annual review in January 2024 during which he would have liked to discuss drawing the 25% tax free lump sum from another pension to pay off his mortgage. He says that as a result he had to continue making his mortgage payments. In my provisional decision I said that in SJP's first email to Mr B about the complaint it said, "*we would like to make you aware that as part of our process, your SJP's partner has been asked not to discuss this matter with you. They can, however, continue to provide service and advice regarding your investments.*" So I didn't think the evidence I'd been provided with supported the idea that Mr B had been told he was unable to have an annual review or receive further (unassociated) advice.

Mr B has subsequently told us that while SJP said he could still get advice from its adviser the adviser had told him not to make contact. And in any case, by this time he had lost faith in the adviser and his ability to make sound financial recommendations. So I've thought carefully about Mr B's further points, but I remain of the same view. SJP did tell Mr B that its adviser "*has been asked not to discuss this matter with you*", so I think it's more likely than not the adviser was simply reaffirming that situation.

But even if I am wrong in that conclusion, I haven't seen any evidence to suggest the adviser refused to have an annual review with Mr B, and indeed SJP did contact Mr B in January 2024 to arrange such a review. This would support the idea that the adviser would have attended a meeting as long as it didn't cover the subject matter of this complaint. Any decision not to attend the meeting was made by Mr B and, even if this was because he had lost confidence in his adviser, he could still have requested a review to be held with another partner of a firm within SJP if he was uncomfortable with his existing one. I haven't seen any evidence to suggest Mr B made such a request, so I can't reasonably say that he was prevented from undertaking further financial planning with SJP and from taking advice about other matters.

Putting things right

I've concluded above that SJP's offer is fair and reasonable in the circumstances of this complaint, so in line with our usual approach SJP should, unless there is good reason why this cannot be carried out – such as conflicting with any existing protections – pay the redress into Mr B's plan in the first instance. If this isn't possible it should be paid to him directly. However in either case the amount should be brought up to the date of this final decision with the addition of interest at 8% simple pa.

I've also considered the impact this matter has had on Mr B and the length of time he had to wait for a response from SJP to his complaint as well as having to bring it to us. Looking at the overall circumstances I think the investigator's recommendation that SJP pays a total of £250 is within the range of what I'd expect to see for that kind of delay, as well as the impact of the adviser's lack of a clear explanation of how the overall concept of higher rate tax relief worked.

My final decision

For the reasons that I've given I uphold Mr B's complaint against St. James's Place Wealth Management Plc.

St. James's Place Wealth Management Plc should pay compensation along the lines set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 24 July 2025.

Keith Lawrence
Ombudsman