

The complaint

Mr C is retired. He had a Self-Invested Personal Pension ('SIPP') that was administered by JAMES HAY ADMINISTRATION COMPANY LIMITED trading as James Hay Partnership ('JHP'). He self-managed the SIPP since 2012. Around the same time, he decided to limit its investment to fixed interest deposit accounts, into which he placed the majority of the SIPP's capital, but for a cash holding retained to cover fees. Annual income withdrawals were made from the SIPP, but he says he ensured they did not push him into the 40% income tax bracket (given that he had other retirement income streams). He closed the SIPP in June 2023.

His complaint is about the circumstances in which the closure happened. He says he was misled to close the SIPP and to make a final withdrawal from it in an amount higher than he needed and wanted, which pushed him into the 40% tax bracket he had always sought to avoid. He says JHP made him believe the SIPP could not remain open if he had less than £25,000 cash in it [the "*£25,000 requirement*"; his SIPP balance would have fallen below this level to around £7,000 after the withdrawal he planned for 2023; so he was forced to make a higher withdrawal and to close the SIPP.

JHP says no £25,000 requirement (for the SIPP) ever existed and there is no evidence of any of its officials mentioning it. Mr C seeks compensation for the additional tax liability he incurred due to size of the final SIPP withdrawal, and for the distress and inconvenience the matter has caused him.

What happened

The SIPP's terms and conditions included the following grounds for closure by JHP –

"17.5

We reserve the right to close your SIPP in the event that:

(1) the SIPP has been open for 12 months or more and no contributions or transfers in have been made to the SIPP; or

(2) the SIPP has held no funds or other assets of any value for a continuous period of 12 months; or

(3) the SIPP has held no funds or other assets of any value for a continuous period of 12 months except for cash and the cash value is less than or equal to the amount of charges or other costs due to us."

Its terms also extended to a "Permitted Investments List" document, which included the following –

"Core investments

- *Unit trusts and OEICs held in the Investment Centre*
- *Investments traded via a panel stockbroker*
- *Fixed term deposits and notice accounts with providers on our Cash Panel*
- *Any cash held in the SIPP bank account"*

No evidence of JHP conveying the £25,000 requirement (for the SIPP) to Mr C has been made available to us. However, he vehemently maintains that such evidence exists in undisclosed telephone call recordings, which he says JHP is probably concealing.

Mr C asserts that the non-disclosure of telephone recording evidence is, in itself, a complaint matter alongside what he has described as a catalogue of JHP's communications failures and deficiencies limiting him and its officials to engage by telephone only. He says this has been his experience since around the same time he started to self-manage the SIPP. He also says that, but for this limitation, there would be documentary evidence of the JHP officials who initially assured him he could continue his pre-existing pattern of withdrawals and that he could leave a cash remainder (regardless of its size) in the SIPP, and evidence of the last, different, official who referred to the £25,000 requirement (for the SIPP) and forced him to make the final withdrawal (and to close the SIPP prematurely).

He has also clarified that the minimum investment in the fixed interest deposit product (the '*Close Brothers account*') he was invested in is not the issue. He acknowledges that the minimum investment for the Close Brothers account was £25,000. He objects to JHP's claim, or suggestion, that he could have confused that with the £25,000 requirement (for the SIPP). He says he did not, that the £25,000 requirement (for the SIPP) was distinctly and separately confirmed to him by the last in a succession of JHP officials he dealt with, and that he was told the SIPP had to be closed if he could not meet the requirement. He believes he was misled by this because the requirement does not actually exist, so his actions in making the final withdrawal that pushed him into the 40% tax bracket and in closing the SIPP were unnecessary.

Mr C has also highlighted an event in 2015 in which an erroneous payment out of the SIPP pushed him into 40% income tax liability, but JHP conceded its fault for this and arranged a correction and resolution with HMRC. He considers that the events in his complaint are comparable, but JHP has unreasonably refused to apply the same concession and resolution effort that it did in 2015.

One of our investigators looked into the complaint and concluded it should not be upheld. She noted that there is a history of problems between the parties, but said her remit was limited to the specific events concerning the 2023 SIPP withdrawal and closure. As such, that was the matter she addressed.

The investigator mainly said – JHP's service did not include advice, so it played no role in advising Mr C's withdrawal and SIPP closure, but it was obliged to process both as promptly as possible; both actions were initiated and driven by Mr C, and the documentation associated with both transactions gave clear warnings about their effects; there is no available evidence that the £25,000 requirement (for the SIPP) was conveyed or confirmed by JHP to Mr C; the complaint has been determined on evidence that has been disclosed; and the 2015 events are not comparable to the 2023 events because JHP conceded its fault in the former but disputes responsibility in the latter, so it cannot reasonably be said that it should repeat the resolution effort it applied in 2015.

Mr C strongly disagreed with the investigator's findings. He considered that she had misguided herself on the complaint issues, had failed to properly consider his evidence and had failed to demand telephone recording evidence from JHP that he is certain it is withholding. He also made detailed submissions on his concerns about and dissatisfaction with the investigator's approach to the complaint, highlighting what he considered to be grave flaws.

The matter was referred to an Ombudsman.

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 have reached the same conclusion expressed by the investigator. I do not uphold Mr C's complaint.

Scope

My remit is the complaint Mr C submitted to JHP in July 2024, and that it responded to in August 2024.

That complaint was headed – “***Complaint re JHP pushing me into higher tax bracket***”. It referred to the 2023 SIPP withdrawal and closure events, to the matters leading to them, to matters concerning the £25,000 requirement (for the SIPP) as the main complaint issues; and to the communications problems, the succession of different officials dealing with the same matter between 2022 and 2023 and the limitations in JHP's systems as the main underlying contributors to the main complaint issues.

The merits of the main complaint issues will be determined. They are within the scope of the complaint and of this decision.

I am not in a position to conduct a meaningful appraisal of JHP's operations, including its communications with clients like Mr C, the competence of its systems and the officials it allocates for client services matters. It is also not my role to do such a thing.

Where specific issues in a firm's operations are relevant to a complaint's main issues they can be considered and dealt with. In Mr C's case, I have read and understood the communications and systems issues he has described. They mainly lend themselves to explaining why his communications with JHP were limited to telephone conversations, and the inconvenience this caused him. He has also explained why this means disclosure of the recordings of relevant telephone conversations (between 2022 and 2023) is important.

The main complaint is still about the 2023 SIPP *withdrawal* and *closure*, and the allegation that Mr C was misled and forced by the £25,000 requirement (for the SIPP) to take steps in both respects – leading to him being *pushed into the higher rate tax bracket*. I have noted his descriptions of the difficulties caused by the limitations on communications, but, on balance, I consider them surplus to requirements, in terms of what I need to determine the main complaint. In order to uphold the complaint, what I need is evidence that Mr C was misled (or, at least, *probably* misled) as he alleges, and that this led directly to him being forced to make the final SIPP withdrawal and to close the SIPP. In this respect, I agree with him that full disclosure of relevant telephone conversation recordings is important.

JHP says it has disclosed what it has been able to identify, with regards to recordings of its telephone conversations with Mr C between 2022 and 2023. Mr C disputes this. I recognise that he also considers JHP's position to be an unfair hindrance, which he believes JHP is intentionally causing, to the success of his complaint. For this reason, I understand the need to determine the matter (whether (or not) all available relevant recordings have been disclosed to us), and I will do so below.

I have also considered Mr C's point about the number of different officials he dealt with between 2022 and 2023. From a service delivery perspective, I can see why he could view that experience negatively. However, it will be wrong to lose focus on the main complaint issues mentioned above. I do not consider that *service experience* is what he is relying upon for success in his case. Instead, he appears to be relying on the substance of what the different officials told him, and of what he told them, so these are the correct areas for focus and they essentially take us back to his point about the importance of disclosure of all relevant 2022 and 2023 telephone conversation recordings.

In summary, I will be dealing with the main complaint issues and, in doing so, I will address the telephone recording evidence disclosure matter.

Merits

A major part of Mr C's case is his claim that JHP is withholding evidence that proves his complaint. Notwithstanding his strongly held belief, the need remains to prove this claim. The strength of his belief, alone, does not do that.

As I said above, JHP's position is that it has disclosed the recordings it has identified, the implication being that it has found nothing else (in terms of recordings of telephone conversations with Mr C between 2022 and 2023) to disclose.

Other than Mr C's doubts and challenges, I have seen nothing that says JHP's explanation is false, so the matter falls to be determined on the grounds of credibility – which party's claim is more credible/reliable? I have not seen enough evidence to conclude that one party lacks credibility in comparison to the other. Therefore, and on balance, I do not have the grounds to say I am persuaded by Mr C's position over JHP's or by JHP's over Mr C's, in terms of the allegation that JHP is withholding evidence.

I simply cannot determine whether (or not) there are more relevant telephone conversation recordings that should be disclosed which have not been disclosed. I am not in a position to vouch for JHP's position but I do not have reason to disbelieve it, and the same applies to Mr C's position. Our service's powers do not extend to using the sort of evidence discovery process that a court could apply in similar circumstances. We operate on the expectation that parties will comply with reasonable and relevant disclosure requests, JHP says it has done so and I do not have grounds to find otherwise.

The above are my main findings on the matter. In addition, I have made findings on the correlation between Mr C's claim about the telephone recording evidence and the merits of his complaint.

This claim about alleged withholding of telephone recording evidence by JHP is probably not as pivotal – in terms of the merits of the complaint – as Mr C considers it to be. Even if it is assumed that the last official who dealt with his income withdrawal in 2023 wrongly told him he could not keep the SIPP open with less than £25,000 cash in it – which is mainly what he believes undisclosed recording evidence will prove, and, for the sake of clarity, which I neither say nor suggest happened – that alone will not give his complaint success.

The complaint and claim for redress (a claim for redress that mainly concerns compensation for the additional tax liability incurred) is mainly dependent on Mr C proving he was *forced* by circumstances into making the 2023 withdrawal. However, he was not.

I have noted his objection every time the investigator reminded him that he wilfully completed the application/request for withdrawal and for closure of the SIPP. I do not wish to exasperate him unduly or at all, and I do not wish to overstate the obvious, but that is exactly what he did. I am aware of his argument that he was left without a choice after what the last official confirmed to him about the £25,000 requirement (for the SIPP), but the fact is that he did have a choice in the matter, so it is quite arguable that he was not forced by circumstances to make the final/full withdrawal that caused his tax problem.

As I quoted at the outset of this decision, the terms for the SIPP had nothing within them supporting the £25,000 requirement (for the SIPP), so this would have been a somewhat immediate, and strong, source of support for Mr C to dispute any reference to such a requirement. The requirement was not in the list of grounds on which JHP could close the SIPP, and "Any cash held in the SIPP bank account" [my emphasis] was expressly included in the list of permitted investments for the SIPP, so that covered a cash holding of 'any' amount (with no mention of a minimum amount).

Indeed, Mr C has said that he disagreed with the official who he says referred to the requirement, so it is within his case that he initially disputed it and that he either knew or believed the official was wrong.

He has consistently repeated, in his evidence, that at least two previous officials disagreed with the last official in terms of his income withdrawal (and SIPP retention) plans and with regards to the £25,000 requirement (for the SIPP). Therefore, it is also part of his case that he was aware of conflict within JHP as to whether (or not) the requirement existed and/or was legitimate. This would have added further ground for him to dispute any claim about the requirement.

Regardless of whether (or not) the last individual was a senior official, if he was attempting to apply the £25,000 requirement (for the SIPP) where the SIPP's terms did not support him, where 'any cash' in the SIPP's bank account was a permitted investment for the SIPP and where his colleagues also did not appear to support him, Mr C stood on good grounds to resist any such attempt. As I address below, in one of the options available to him he did not even need to do anything other than what he initially planned to do.

I share the investigator's approach in avoiding any treatment of the history of problems between the parties, but that history can be noted as evidence that Mr C had experience of dealing with and challenging JHP if there were problems and/or grounds to do so. I am also satisfied, from the contents of his submissions, that he is very capable of presenting and defending his position competently in a complaint.

He elected to make the final withdrawal from the SIPP and to close the SIPP. As opposed to doing neither and instead challenging (on grounds such as those directly above) any alleged attempt to apply the £25,000 requirement, or as opposed to resisting the alleged attempt and proceeding with his intended withdrawal and then complaining (on grounds such as those directly above) if JHP subsequently took steps to close the SIPP.

The step(s) he took was the choice he made in the circumstances, out of a range of choices that he could have made. It was not a step(s) that was forced upon him, there were reasonable alternatives available to him such as those summarised above. This tangible and meaningful element of free will on his part stands to defeat his claim that his actions were forced, and this aspect cannot reasonably be ignored.

His position could be different if, for example, he had proceeded with his specific withdrawal plan and if, in response, JHP then took a decision (and action) to close the SIPP (and to remit to him the SIPP's cash balance, which he did not want or ask for) because of the alleged £25,000 requirement (for the SIPP).

Record of the entire process would probably exist because it would have been a formal process and JHP would have driven it to its conclusion. In any case, it would have been evident that Mr C did not close the SIPP and did not make the additional withdrawal, because JHP alone would have actioned both. In this scenario, there would be no question about Mr C's free will, it would be quite clear that the relevant actions belonged to JHP, and that he had no role in the matter. Unfortunately for him, the facts of his case are essentially the opposite. The relevant withdrawal and closure actions belong to him, there is no available evidence to conclude, on balance, that JHP had a directing or influencing role in the matter, and as I have established above, they were actions he elected to take out of alternative actions he could reasonably have taken.

Viewed in the above context, any undisclosed recording evidence that might establish Mr C's claim that the £25,000 requirement (for the SIPP) was expressed to him does not appear to be pivotal.

The above serves my findings about the main complaint issues just as much as they do the undisclosed recording evidence allegation. Mr C has made a considerable amount of submissions and shared a considerable amount of the evidence he has available to him. They have been very helpful in informing me about the issues, but also about the wider circumstances. However, his complaint still distils to the question about who to blame for the 2023 withdrawal that caused his income tax problem.

What I have said above essentially holds him accountable for his own actions, in which case JHP cannot reasonably be blamed. I expect Mr C will vehemently disagree with this conclusion, and I understand his strong feelings about the events he has described. However, the conclusion is reasoned – as set out above – and I consider it fair in the face of evidence available to me.

He has referred to the 2015 incident. JHP resolved that incident because it appears to have considered itself to be at fault for it. It did differently in the 2023 matter because it disputes liability for it. As such, liability must be proven before an argument can reasonably be made about both events being comparable. As I have confirmed, I do not have grounds to find JHP liable for the withdrawal Mr C made in 2023.

My final decision

For the reasons given above, I do not uphold Mr C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 1 October 2025.

Roy Kuku
Ombudsman