

The complaint

Mr G complains, with the help of a representative, that James Hay Administration Company Ltd ('James Hay') failed in its duties in relation to the establishment of his self-invested personal pension ('SIPP') and the subsequent acceptance of Elysian Fuels shares.

What happened

Mr G purchased shares in Elysian Fuels in his personal capacity, established a SIPP and then sold the shares to his SIPP, in connection with which he was paid £50,000 from his pension. As I understand it, Mr G purchased the shares by way of paying a 16p per share cash contribution and with the 84p per share balance financed by a limited recourse loan.

At the time Mr G established his James Hay SIPP in 2013, it was recorded that:

- He was self-employed and earning around £85,000 annually.
- A pension valued at around £300,000 was to be transferred into his newly established SIPP.

Mr G subsequently sold a further 70,000 shares in Elysian Fuels he owned in his personal capacity to his SIPP, in connection with which he was paid £70,000 from his pension in 2014. This transaction is the subject of another complaint.

So, Mr G used a total of £120,000 from his pension to purchase Elysian Fuels shares from himself. The remaining circa £180,000 of the £300,000 transferred into the SIPP remained in the SIPP (aside from the deduction of regular fees) until 26 October 2016 when Mr G took his pension commencement lump sum of around £44,000. Then on 17 January 2017, Mr G transferred the balance of just under £133,000 to another pension scheme and his James Hay SIPP was closed.

The Elysian Fuels investment failed and lapsed without value and Mr G has been pursued by HM Revenue and Customs ('HMRC') in connection with the tax benefits he received from his involvement in the Elysian Fuels scheme.

Background to this complaint

Mr G complained to James Hay, it reviewed his complaint and issued its final response letter on 10 December 2019. The final response letter said that Mr G had resubmitted his complaint letter dated 18 November 2019 and that this had been received by James Hay on 4 December 2019. James Hay concluded that Mr G's complaint had been referred to it too late under the rules that govern the jurisdiction of our service. Unhappy with its response Mr G referred his complaint to this service.

One of our investigators reviewed the complaint and explained that this complaint (which relates to the 2013 transaction only) was made within six years of the event complained about, so was one that we could consider.

The investigator went on to explain that they thought the complaint should be upheld and that to put things right James Hay should compensate Mr G for the adverse tax implications resultant from releasing monies from his pension by way of selling the Elysian Fuels shares to it. They set out that James Hay should undertake to pay to Mr G (or HMRC) any monies he is found to owe HMRC – in relation to the transaction that is the subject of this complaint – in excess of basic rate tax on 75% of the sum. This was on the basis that they thought Mr G would always have paid some tax on the withdrawal of income from his pension but had this been done in the ordinary course of taking benefits at retirement, Mr G would likely have been eligible to 25% tax-free and was likely to be a basic rate taxpayer in respect of the monies that were subject to income tax.

James Hay subsequently made an offer to settle this complaint and Mr G's other complaint relating to the later Elysian Fuels transaction set out above. The offer was issued on 4 July 2024.

James Hay's offer was to:

- Undertake to pay the additional tax and interest owed to HMRC. Additional tax being the difference between the tax that Mr G would always have had to pay on the withdrawal of the relevant funds from his pension and the amount he is found to owe HMRC as a result of the unauthorised payment charge, surcharge and interest.
- Pay to Mr G £500 compensation for the distress and inconvenience caused. This payment covers both transactions about which Mr G complains not just the transaction that is the subject of this complaint.

James Hay's starting position – in relation to the deduction of tax that would always have been payable on the monies released – was that Mr G was likely to be subject to higher rate tax in retirement. But James Hay invited Mr G to provide evidence of his likely tax position in retirement as part of his response to its offer if he disagreed with the assumption made.

Mr G and James Hay have been in correspondence in relation to the settlement offer but agreement hasn't been reached and, as I understand it, the information requested in the settlement proposal hasn't been provided.

Throughout the course of this complaint, we've been provided with submissions and information about Mr G's circumstances at the time of his investment in Elysian Fuels and more recently. Amongst other things, it's been noted that:

- Mr G used the funds from his SIPP to invest in a business, which has since failed.
- For the last ten years Mr G has been getting by on minimal income.
- Mr G hasn't reached a settlement with HMRC.
- Mr G is not a higher rate taxpayer.

Because agreement couldn't be reached, this case was passed to me for review. I sent Mr G and James Hay my provisional decision, explaining that I thought James Hay's offer to settle the complaint – and the proposed redress methodology – was fair and reasonable but that Mr G's presumed tax rate should be basic rate in relation to the pensions monies to which the relevant HMRC bill relates. I said that I would consider any further submissions either party wanted to make.

James Hay accepted my provisional decision and made no further submissions. Mr G disagreed and made further submissions, to which I responded. Rather than set out the exchange in full, I've summarised below Mr G's comments and what I've said in response.

Mr G said that:

- He wants a “*full ombudsman final decision*”, where all evidence is reviewed, clear information in relation to Mr G’s tax position is set out and that, if necessary, would be legally enforceable.
- The monies released from Mr G’s pension were released 12 plus years ago and are long gone. He now has no money, only debt.
- Mr G is in a very difficult situation, he has no assets or money to his name and in all likelihood will be nil rate taxpayer in retirement.

I explained that:

- I undertook a full review of Mr G’s case and set out my findings in full. The decision focuses on the issue that remains in dispute but that does not mean that the review or my consideration of the complaint were limited. It’s for me as the deciding ombudsman to decide if I have sufficient information to reach a decision and to set out my findings. In this case, I was satisfied that I had sufficient information to reach a decision that is fair and reasonable under the circumstances.
- If I issue a final decision endorsing the redress methodology and confirming my findings in relation to Mr G’s likely tax position and it is accepted (by Mr G) then it would be binding.
- As I understand it, it is not in dispute that Mr G is a UK taxpayer and is entitled to the state pension.
- Based on current entitlements and allowances:
 - The 2025 full state pension is: £11,973 per year.
 - The 2025 nil rate personal allowance is: £12,570.
- So, the scope for additional pension income under the threshold (from which income tax would not be deducted) is: £597 per year and, based on current annuity rates, the monies released from Mr G’s SIPP in connection Elysian Fuels alone would have provided an income significantly in excess of that.
- Overall, taking into account the submissions made in response to my provisional decision, I remained of the view that Mr G would more likely than not have been a basic rate taxpayer in relation to the monies to which the relevant HMRC bill relates.

Some of the above referenced correspondence was exchanged on this complaint and some on Mr G’s linked complaint. I’ve considered and summarised all of the post provisional decision correspondence on both complaints in this instance, as this is relevant to both complaints.

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.

The parties to this complaint have provided detailed submissions to support their respective positions. I’m grateful to them for taking the time to do so. I’ve considered these submissions in their entirety. However, I trust that they will not take the fact that my decision focuses on what I consider to be the central issues as a discourtesy. The purpose of this decision is not to address every point raised in detail, but to set out my findings, on what I consider to be the *main points*, and reasons for reaching them.

Where the evidence is incomplete, inconclusive, or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is more likely than not to have happened in light of the available evidence and the wider circumstances.

It's my role to decide if the business (in this case James Hay) has acted fairly and reasonably in respect of the individual circumstances of the complaint made and – if I find that the business has not done so – award appropriate redress for any material loss or distress and inconvenience suffered by the complainant, Mr G, as a result of this.

James Hay has made an offer to settle the complaint, the details of which I set out above. The proposed methodology of the offer is in line with what our investigator recommended, and I think it is fair and reasonable under the circumstances.

Mr G hasn't accepted James Hay's offer and agreement has still not been reached in relation to Mr G's likely tax position in respect of the monies released from his pension. Mr G has said that he wouldn't be a taxpayer in relation to these monies and maintains that he will likely be a nil rate taxpayer in retirement. James Hay's starting position was that Mr G is likely to be a higher rate taxpayer, but it has since confirmed that it accepts my finding that Mr G would more likely than not have been a basic rate taxpayer in relation to the monies released from his pension and to which this complaint relates.

I remain of the view that the presumed tax rate has to take into account all other taxable sources of income available to Mr G in retirement such as his state pension, any other personal pension provision and any other sources of taxable income.

This is, of course, not an exact science. I also acknowledge that, depending on how Mr G takes his income in retirement (or would have taken an income from the monies he released from his SIPP had his SIPP not purchased Elysian Fuels shares), the level of income taken may vary from year to year. I note that Mr G took a pension commencement lump sum in 2016, but it isn't clear from the submissions made if he retired at that point, or indeed if he has since retired. We do know that around the same time Mr G transferred around £133,000 to another pension scheme but we haven't been provided with details of what happened with these monies. And we've also been told that Mr G has since been in receipt of minimal income, but it's not clear whether that income has been generated from the pension monies he transferred or from elsewhere.

The tax bill in question (in relation to which compensation is being offered) relates to Mr G's James Hay SIPP, so it is the tax that would likely otherwise have been payable in respect of income that would have been drawn from this pension, had it remained intact – and monies not released from it as a result of Mr G's participation in the Elysian Fuels scheme – that is relevant here.

Whilst this is no longer in dispute, for completeness, based on the information that we've been provided, I'm not persuaded that Mr G would more likely than not have been a higher rate taxpayer in retirement in relation to any monies from his James Hay SIPP, to which the relevant tax bill relates.

I've taken into account everything that Mr G has told us about his financial situation throughout the course of his complaint. But I'm not satisfied it's more likely than not that Mr G wouldn't be a taxpayer in retirement in relation to any monies from his James Hay SIPP, to which the relevant HMRC bill would relate. Based on the information provided to us, on balance, I think it's fair and reasonable to conclude the additional tax should be calculated on the basis that Mr G would more likely than not have paid basic rate tax on 75% of the funds released from his SIPP.

So, taking everything into account, I think that James Hay's offer to undertake to pay what Mr G is found to owe HMRC in excess of the tax he would always likely have paid on the relevant sum if withdrawn as income in retirement is fair and reasonable. But I think that the calculation should be based on Mr G being a basic rate taxpayer (to which James Hay has agreed).

James Hay has also offered to pay Mr G compensation for the distress and inconvenience caused. The offer is for £500 total – but, as I've set out elsewhere in this decision, my understanding is that this relates to both transactions about which Mr G complains, the one that is the subject of this decision and the one that is being dealt with under a separate complaint. For the purposes of setting out my direction below, I've treated this as being an offer of £250 compensation in each complaint. I think that this award is fair and reasonable in the circumstances of this complaint.

I understand from Mr G's submissions that he is in a difficult situation financially and otherwise but in considering the level of compensation that is fair and reasonable for James Hay to pay, I'm only considering the impact of him investing in Elysian Fuels and the consequences of that, which reasonably flow from James Hay's actions. That's not to say that I underestimate the seriousness of the situation, for which Mr G has my natural sympathy.

My final decision

My final decision is that James Hay Administration Company Ltd's offer is fair and reasonable under the circumstances and, based on the information provided, the additional tax should be calculated on the basis that Mr G would more likely than not have paid basic rate tax on 75% of the funds released from his SIPP.

Because Mr G hasn't accepted the offer, this matter hasn't been settled. I uphold Mr G's complaint and direct James Hay Administration Company Ltd to put things right in the manner it has already offered to. I've set out details of James Hay Administration Company Ltd's offer earlier in this decision, and I don't think there is any dispute between the parties as to the nature of the offer but, for the avoidance of doubt, James Hay Administration Company Ltd should:

- Undertake to pay the additional tax and interest owed to HMRC in relation to the transaction that is the subject of this complaint. Additional tax being the difference between the tax that Mr G would always likely have had to pay on the withdrawal of the relevant funds (£50,000) from his pension (if this had been taken as a initial tax-free lump sum then regular income) and the amount he is found to owe HMRC as a result of the unauthorised payment charge, surcharge and interest.
- Pay to Mr G £250 compensation for the distress and inconvenience caused.

James Hay Administration Company Ltd must within 28 days of being notified of Mr G's acceptance of this final decision provide Mr G with a written undertaking in line with the above and pay to him £250 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 8 September 2025.

Nicola Curnow
Ombudsman