

The complaint

Mr H previously held a pension/Retirement Account ('RA') with St. James's Place Wealth Management Plc ('SJP') for around 10 years, until February 2023 when he transferred the liquidated RA into an AJ Bell Self-Invested Personal Pension ('SIPP').

He says SJP misrepresented the date the switch was executed and the RA's liquidated transfer value by almost £10,000 below its true value; he says SJP wrongly deducted an Early Withdrawal Charge ('EWC') during the transfer; he says SJP gave him incorrect advice about AJ Bell's charges and about a property holding in the RA; he says SJP committed repeated data breaches, to his direct detriment; and he is unhappy that SJP took longer to address his complaint than it should have.

SJP has offered Mr H £150 for its delay in addressing his complaint, but it disputes all other aspects of the complaint.

What happened

One of our investigators looked into the complaint and concluded that only one of the two data breach allegations should be upheld; that complaint handling is an activity outside our remit so Mr H's complaint in this respect will not be addressed, but SJP's £150 offer is reasonable; and that the other issues in his complaint are not to be upheld.

The investigator mainly said:

- The terms for the RA required SJP to use its value on the next working day after receipt of the transfer request as its transfer value. In Mr H's case, his transfer request was received on 9 February, and the transfer value was determined on 10 February. This complied with the terms, so there is no wrongdoing in this respect.
- Mr H has referred to accessing his RA online on 15 February and seeing a different (and higher) valuation, leading to his allegation that SJP has misrepresented the liquidation value. However, there is evidence showing the breakdown of the transfer based on the valuation on 10 February and SJP has explained that the transaction was not processed until thereafter, hence the reason why Mr H could still see a valuation online on 15 February. The transfer was completed within seven working days so it was not unduly delayed.
- An EWC was deducted from the transfer value. From the outset of the RA Mr H was informed about how SJP's Initial Advice Charge ('IAC') for each piece of advice for the RA would not be deducted from the values invested, but in return if the relevant investment was to be withdrawn or transferred within its first six years then an EWC (on a reducing scale, depending on when the withdrawal/transfer happened) would apply. He was reminded of this up to the new, and his last, RA contribution/investment made in 2021, in relation to which the advice pack he received made reference to the EWC arrangement. New investments in 2018, 2019 and 2021 were therefore still within the EWC period when the EWC was applied at the time of the 2023 transfer. Mr H ought to have known that the EWC was

applicable.

- If Mr H seeks punitive measures against SJP with regards to his data breach allegations, that is beyond our remit and is a matter for the Information Commissioner's Office ('ICO'). However, we can address an allegation about loss and/or distress caused by the way a firm has handled data. In Mr H's case, he says his SJP adviser disclosed his affairs to external advisers and to another client, but there is no evidence that either disclosure happened. There is evidence supporting his allegation about an earlier data breach in which his previous SJP adviser erroneously disclosed a client list (including Mr H's name) to all his clients during a handover. SJP has conceded this data breach and given assurance that corrective action has been taken. Mr H should be awarded £150 for the distress the data breach caused him.
- Mr H says SJP gave him incorrect advice about AJ Bell's charges, in order to persuade him to use an alternative SIPP from SJP's preferred provider. The facts show that this was more of a misunderstanding, rather than incorrect advice. Mr H was clear about his intention to hold the SIPP in cash, but SJP's view on charges looked beyond that and looked at when the SIPP would eventually be invested, so it referred to charges in the AJ Bell SIPP when it held investments. Email evidence confirms this.
- He also says SJP misled him by saying mortgage interest could be offset against Capital Gains Tax ('CGT') upon disposal of a property holding in the pension, but in fact the opposite was the case. The adviser says he recalls saying *liabilities* could be offset, not mortgage interest. However, it is not unreasonable to consider mortgage interest as a liability, so the adviser ought to have elaborated on what he meant. Nevertheless, the adviser made clear to Mr H that he was not a tax expert, that his view should not be relied upon and that he (Mr H) should refer to an expert for his enquiry, so the adviser's input did not amount to advice. Furthermore, no financial loss to Mr H resulted from the matter.

SJP accepted the investigator's view and agreed to the total payment of £300 in compensation to Mr H.

Mr H disagrees with the investigator's findings, mainly with regards to the transfer related issues. He referred to evidence of different and growing values being presented in the RA, online, on 13 and 15 February. He says this proves that the RA could not have been liquidated on 10 February as SJP claims, because such valuations would not have been available if that had been the case.

He believes SJP delayed the liquidation until 15 February. He argues that the terms for the RA say where such an execution delay occurs the valuation date should be the delayed execution date; that the difference between the higher net amount he would have received in the transfer based on valuations on 15 February and what he actually received should be paid to him; and that, in addition, the £300 total compensation that SJP has agreed should also be paid to him. He also raised what he described as difficulties he was having in obtaining more evidence from SJP to support his complaint. The investigator allowed some time for his pursuit, but eventually had to refer the case 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.

Like the investigator, I acknowledge SJP's offer of £150 for its complaint handling. However, I make no finding about Mr H's claim, or suggestion, about complaint mishandling because it is beyond my power to do so.

I can determine complaints about regulated activities, but complaint handling, in isolation, is not a regulated activity. It is also not an ancillary activity connected to the conduct of a regulated activity.

Sometimes a complaint to a firm and the alleged mishandling of it might form a part of the substantive case. If so, addressing the firm's complaint handling process might then be a necessary part of determining the overall complaint. Mr H's complaint is not that type of case. The issues in his complaint were broadly crystallised at the point of complaint, so SJP's complaint handling process was separate to them. In other words, its complaint handling did/does not form a part of Mr H's substantive case, so it is an isolated matter that is outside my remit.

I understand Mr H's submissions about the alleged data breaches, and I have read the correspondence/evidence related to his claims that his SJP adviser shared information about him/his circumstances with an external adviser and with another client.

It is not disputed that the adviser contacted an external colleague to seek input on a matter related to Mr H. However, the correspondence shows that the adviser's initial enquiry (to the colleague) was such that neither Mr H's name nor details of his circumstances were shared. Indeed, the colleague responded with questions asking about details, and when they were put to Mr H he made clear that he did not approve of the pursuit, so it went no further thereafter.

It is also not disputed that the adviser sought to help another client on a specific matter that he knew Mr H held in common. Evidence also shows that he asked Mr H to share specific information he had (in relation to the matter) for this purpose, to which he does not appear to have responded. There is no evidence that his name or details of his circumstances were ever disclosed by the adviser to the other client and this line of enquiry also appear to have gone no further thereafter.

As the investigator found, the data breach committed by Mr H's previous SJP adviser has already been conceded by SJP. In the course of a handover exercise, prior to the adviser's retirement, a full client list was sent to all clients, thereby disclosing their identities to each other.

This was a significant data breach and I do not suggest otherwise, but I echo the investigator's statement about primary responsibility for such a matter resting with the ICO. As such, I make no further finding on it. It clearly had a distressing effect on Mr H and I doubt SJP will dispute this. To compensate him for that effect, I am satisfied with the £150 award proposed by the investigator. It is a fair and reasonable level of compensation for the somewhat isolated distress the matter would have caused him. I have not seen evidence that it has resulted in him facing continuing consequences, or that there is a risk of such.

The issues that remain to be addressed are about the value of the liquidated RA that was transferred to the SIPP (including the EWC that was applied) and the allegations that SJP misled Mr H on AJ Bell's charges and on CGT/tax treatment of mortgage interest upon disposal of his property holding.

Available evidence shows that Mr H's liquidation and transfer instructions were received on 9 February, valuation on 10 February was used for the transaction, by 17 February the transaction had been executed (and settled) and BACs remittance was made, on 20

February SJP wrote to Mr H to confirm the transfer, and by 21 February the remitted funds appear to have been received by AJ Bell.

SJP worked under a Service Level Agreement ('SLA') expectation in which it had five working days from 10 February to process and complete the payment. 10 February was a Friday. 17 February was the Friday that followed. The payment on 17 February happened on the fifth working day after 10 February. That met the SLA, and it addresses Mr H's argument about a delayed execution date being used as the valuation date. Evidence shows that there was no delay in SJP's liquidation and remittance/transfer process.

The above also potentially explains why Mr H continued to see valuations for his RA after 10 February. Settlements of liquidated funds require time, hence the SLA expectation period. Mr H's RA had 19 fund holdings and their liquidations were not settled until after 10 February. It is true that he continued to see valuations for the RA after this date, and I can understand why at the time he could have interpreted this as meaning the RA's holdings remained intact, but the information he saw (as evidenced by the screenshots he has provided) appears to have conveyed no more than "valuations".

He already knew that the RA was being liquidated and transferred. Even if on 13 and 15 February, the dates that he has referred to, the online valuations led him to believe the process had not begun, when he received SJP's confirmation of 20 February he was informed that process was complete. Upon his request, and on 17 March, SJP sent him a breakdown of the liquidations showing that they were executed on 10 February values, so with the breakdown in hand he was informed of this too. As the investigator said, using the valuations from the working day after receipt of his instruction was in line with the terms for the RA.

With regards to the EWC deduction, I endorse and echo the investigator's findings. There is indeed enough evidence, as highlighted by the investigator and by SJP, to establish that the arrangement – in which the IAC was not applied to new money invested but an EWC would subsequently apply if the relevant investment was withdrawn within its first six years – was reasonably prominent in the terms agreed by Mr H and in advice related communications he received over time. This arrangement applied afresh for each new money investment in the RA so, as SJP has said, RA contributions/investments in 2018, 2019 and 2021 were captured by the six years period and by the EWC provisions during the February 2023 liquidation and transfer process.

There is also evidence suggesting that Mr H anticipated that the provisions would apply. On 8 February, prior to his instruction the following day, he wrote to his SJP adviser and, amongst other things, said –

"You mentioned possible charges around £7,000 to withdraw but when I opened the account [the previous adviser] said I wouldn't have fees to withdraw if I have the pension for at least five years. I've had it now for nearly 10 years so wanted to check if you can help with this so I can transfer the full amount?"

It is not clear if or how the adviser responded to this specifically, because his attention appears to have been subsequently diverted unto his feedback to Mr H on arrangements for the transfer and on AJ Bell's fees. However, what is reasonably clear in the text above is that he appears to have been given, at the time, prior reminder about the EWC before he instructed the liquidation and transfer.

The EWC was legitimately applied and I have not found grounds to conclude otherwise.

Overall and for the above reasons, I find no wrongdoing in SJP's execution of the RA

liquidation and transfer process, and none with regards to the valuations used and the net proceeds transferred to AJ Bell in the process.

As stated above, the SJP adviser gave feedback on AJ Bell's fees. Mr H says he was misled in this respect, but the email exchange does not establish that. The adviser clearly qualifies his feedback in the context of AJ Bell charging on the basis of "% of funds in the SIPP" and he said, given the value of the fund holdings that were in the RA on 8 February 2023, AJ Bell's annual charge would be around £667.29. On the following day, alongside his instructions, Mr H responded to say he had contacted AJ Bell and it had confirmed that it did not charge for cash held in the SIPP, but instead paid interest on such cash.

This evidence shows that there was a misunderstanding between both sides. The adviser was considering AJ Bell's fees in terms of an invested SIPP. Mr H's intention was to hold the SIPP in cash following the transfer, so fees in this context were what was relevant to him. Overall, I do not consider that the adviser intended to mislead him or misled him, and as stated in his response on 9 February he had obtained direct and accurate information from AJ Bell before he instructed the transfer. He also transferred the RA to the AJ Bell SIPP despite the SJP adviser's comments.

With regards to the CGT issue the investigator is correct in saying no financial loss resulted from it. There is no evidence of that. The SJP adviser's comments in the issue have been described differently by both sides and there does not appear to be independent record of what was said, so it seems this aspect cannot be determined. In any case, there is no evidence that SJP undertook responsibility to provide Mr H with tax advice or that it provided him with such advice. Any comment the adviser made stood in this context and in Mr H's awareness of this context, and the adviser's evidence is that he reminded Mr H that he was not a tax expert and that advice from a tax expert should be sought.

It is clear that Mr H continued to look into the CGT issue after the adviser's comments. He did not rely upon and did not act on those comments. In his email to the adviser on 31 January 2023 he said, amongst other things, – *"I also spoke to my property developer friend again about CGT on selling BTL properties ... I mentioned that you said I can deduct the outstanding mortgage interest from the CGT bill. He said that outstanding mortgage interest won't reduce my CGT bill on BTL disposals, but I can deduct things like legal costs, stamp duty and estate agent fees related to the sale. Here's an article I found on Which that also gives an overview ..."*

Overall, on balance and for the above reasons, I do not uphold the allegation that SJP misled Mr H with regards to AJ Bell's charges and the CGT issue.

I note the pursuit for additional information from SJP that Mr H says he is conducting, and that he shared with the investigator. It appears that the pursuit remains unresolved to date, so I have considered whether (or not) this decision should be delayed until he says it has. I do not consider that it should. As is evident from my findings above, there is sufficient available [factual] information and documentation to determine his complaint issues. I cannot envisage anything new, that he could now obtain from SJP, that would carry the potential to alter my findings. I also note that he has not been specific about the prospect of any such new evidence having that potential. For these reasons, I am satisfied that this decision can be issued on the basis of available information and evidence.

Putting things right

As set out above, I uphold only the complaint issue about the distress caused to Mr H from the data breach committed by his previous SJP adviser. In this respect, I order SJP to pay him £150. I also acknowledge that it has agreed to pay him an additional £150 in relation to

its complaint handling process.

My final decision

For the reasons given above, I partly uphold Mr H's complaint and I order St. James's Place Wealth Management Plc to make the compensation payment to him stated above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 2 February 2024.

Roy Kuku
Ombudsman