

## **The complaint**

Mr E complains St. James's Place Wealth Management Plc (SJP) failed to explain the tax or early withdrawal charge implications when he withdrew all his pensions funds. He was wrongly told he could re-instate his pension and as a result he has suffered a financial loss.

## **What happened**

Our investigator set out a detailed timeline of events in his view letter of 6 June 2023. I have summarised the details below.

In July 2016, Mr E approached SJP for advice to consider switching his three existing capped drawdown pension plans from his then provider Aegon. Mr E felt he was receiving a poor return on his investments and wanted to look at alternative options.

On 25 July 2016, SJP issued its suitability letter and recommended he switch all three pension plans valued at around £242,827. The suitability letter recorded that to do so, Mr E would incur an exit penalty of £3,248. Mr E decided to transfer his plans to SJP.

In November 2016, Mr E requested an additional income withdrawal of £15,000 gross to pay towards expenses incurred on a property purchase.

On 26 November 2016, SJP issued a second suitability letter with regard to the withdrawal Mr E wished to make. It explained that as he was already taking the maximum amount of income allowable from his capped drawdown pensions for the 2016/2017 tax year it would be necessary to convert one of his capped drawdown pensions to a Flexible Access Drawdown pension. The suitability report stated that any income withdrawals above the annual withdrawal allowance (AWA) of 7.5% of the fund value would incur an early withdrawal charge.

On 12 December 2016, the withdrawal confirmation letter confirmed that £15,000 withdrawal had incurred an early withdrawal charge of £151.27 as a result of the amount being over maximum AWA allowed.

In March 2017, following a meeting with his SJP adviser, Mr E opted to take further one-off withdrawal amounts from your pensions amounting to £30,000 but these were deferred until after the start of the 2017/2018 tax year.

On 11 April 2017, the withdrawal confirmation letter confirmed that an early withdrawal charge of £1,406 had been deducted.

In June of 2017, Mr E's circumstances changed, he contacted SJP to inform them he needed urgent access to at least £105,000 of your pension funds in order to fund a property purchase scheduled for early July 2017.

On 12 June 2017, SJP issued a letter, confirming his request. It said that to be certain of this amount being released, all three of his plans with SJP would need to be fully encashed leaving no further pension with SJP. It said the remaining pensions in capped drawdown would also need to be converted to Flexible Access Drawdown plans. It quoted early

withdrawal charges as being £12,668 leaving a taxable income of £198,468. The report also went on to explain that as Mr E had already received income in the 2017/2018 tax year, he would be liable to higher rate and additional rate income tax on the proceeds leaving a net income amount of £114,304.

On 21 June 2017, this letter was re-issued after Mr E contacted SJP to say he hadn't received it.

On the 22 June 2017, Mr E contacted SJP to confirm that his house purchase may fall through and that he was shocked by the levels of EWC and tax payable on the withdrawal and that he would need to consider how to proceed by 26 June 2017. He asked if his funds could be re-instated.

SJP provided the telephone call notes. They showed Mr E spoke with SJP again on 23 June 2017 and he confirmed he was aware the tax would be around £79,000 and that the full encashment may mean he could have more than the £105,000 he required, and he also said there was a possibility he may lose his prospective house purchase.

On 23 June 2017, SJP wrote to confirm Mr E's funds had been disinvested and explained the early withdrawal charges that had been applied. Subsequently, Mr E was not able to complete on his house purchase and requested his funds be re-instated.

In November 2017, telephone call notes from SJP, showed he was unhappy with the early withdrawal charges that had been applied. Mr E said he had forgotten about them, and he did not agree that the pensions should have been fully encashed. The notes state that Mr E said he accepted that he had made a "bad decision" to encash his pension, but he did not raise a complaint at the time.

In September 2022, when Mr E was made aware SJP were not able to re-instate his funds, he raised a complaint with them.

Mr E said:

- He was not made aware of the charges for transferring his Aegon plan to SJP
- He was not aware that withdrawing his money would result in the termination of his pension plans with SJP and that this was not disclosed until after his funds had been transferred without his permission.
- He did not receive the letter dated 12 June 2017 until 22 June 2017 and that he was not made aware of the super tax implications.
- SJP had originally told him that his funds could be re-instated.

On 10 January 2023, SJP issued its final response. It didn't uphold Mr E's complaint. It said SJP acted on his urgent income withdrawal requests with full permission, and that they had explained that they had not caused any significant errors. SJP apologised that they had said that a reversal or re-instatement of his funds would be more possible than it actually was and pointed out this was due to HMRC rules rather than a decision it took. But it said due to the length of time taken to provide its final response it offered £150 as a gesture of goodwill. Mr E accepted the offer of goodwill without prejudice, but he remained dissatisfied and brought his complaint to this service.

An investigator looked into things for Mr E. On balance he found that SJP had acted on Mr E's instructions and had made him aware on each occasion of the implication of his withdrawals in terms of both early withdrawal charges and tax. In his view, Mr E's overriding concern was to secure his house purchase. He sympathised that this had subsequently

fallen through but he didn't agree that SJP had acted unfairly or made any significant errors and so he didn't uphold Mr E's complaint.

Mr E disagreed. He made numerous and detailed submissions. In summary he said: Some of the background points detailed were irrelevant to the complaint and he did not understand why they were noted in the investigators view

He has never received a Suitability Letter dated 12 June and as he was not aware it existed; he couldn't have contacted SJP to ask where it was

SJP had failed to follow its own procedures and as he had not signed the Suitability Letter and returned it SJP did not have his permission to proceed, nor could he have been aware of the early withdrawal and tax implications.

In an email dated 22 June Mr E says he asked for information regarding any costs and had said when this information was received, he would get back by Monday 26 June 2017 latest. I did not receive a response from SJP admin.

Mr E maintains advice should have been offered by SJP – that is what they were being paid for.

Mr E asks this service to refer to his online submissions on his complaint form which were:

1. Transfer of funds from my Retirement Account (RA) without his final authorising signature.
2. Inappropriate and Incorrect advice given – specifically he was told monies could be reinstated but was then told, six months later after much chasing and worrying, that they could not be reinstated. He says SJP have admitted their error in their final letter
3. SJP has not followed its own procedures.
4. Mr E details his initial transfer from Aegon to SJP was £242,827.19 after charges of £10,826.20 were made as follows: • £3,248.20 exit fee from Aegon plus • £7,578 entry fee to SJP. Following one regular annual income withdrawal in March 2017, the value of all three plans as of 5 June 2017 was £211,136.
5. His initial enquiry in June 2017 was for £105,000 but SJP local office administrator advised me that the "Power Planners" at head office had advised it best to take a full withdrawal.
6. It wasn't explained why but they said it was "the best thing to do". It is now apparent that this was inappropriate advice because this resulted in SJP applying an Early Withdrawal Charge of £8,340.63 in addition to the high

Mr E asks for the following compensation:

1. Payment of £19,340.55 in compensation for the amount of "super tax" paid unnecessarily. He maintains had the monies not been wrongly transferred I would have only had to pay my usual tax rate on any future annual income withdrawals.
2. Payment of £12,668 in compensation for the termination charge of 6% because it was not his decision to terminate the plans.
3. Refund the commission from the initial transfer fee to be repaid to me along with any charges taken from the fund during the term it was with SJP, because he did not receive the promised appropriate advice and the Senior Partner was unavailable to me on numerous occasions. I was therefore paying for something I didn't receive.

As Mr E did not agree with the investigators view the matter has been passed to me for a final decision.

### **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 independently reached the same decision as our investigator, and I won't be upholding Mr E's complaint. I appreciate this will come as a disappointment and I clearly understand the strength of feeling Mr E has with regard to the decisions he took and how he feels other actions could and should have been taken. I will address these in my decision.

It's important to say I have summarised this complaint in less detail than Mr E has done and, I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this; our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it - I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome. Instead, I will focus on what I find to be the key issue here which is that Mr E feels that he was mis-advised into taking withdrawal from his pension which has ultimately led to him suffering a financial loss.

In deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Mr E and by SJP. I have also listened to the telephone conversations available between Mr E and this service and SJP.

Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words, I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

The advice given to Mr E was based on conversations he had with his financial advisor. And the recommendations were also presented to him verbally before being documented in the suitability reports that I've mentioned earlier. As there are no recordings of those conversations, I have no way of knowing for certain what was said. But the suitability report was clearly sent to Mr E and set out the decisions that he later implemented. So, I must base my decision on the evidence that remains from the time – namely the documents that SJP produced. But I have also considered carefully when they were issued and whether Mr E was aware or ought reasonably to have been aware of the decisions he was taking and the financial implications of doing so.

I have set out the background to this complaint in terms of a timeline of events since Mr E transferred his pensions to SJP. I appreciate Mr E doesn't feel that every point is relevant to his complaint, but it is detailed both for context and to highlight earlier withdrawals and Mr E's previous experience and understanding of the implications of making withdrawals from his pension plans.

Initially Mr E had also raised complaint points regarding the initial transfer from Aegon and the costs involved in doing so, but he has withdrawn this aspect of his complaint. I have listened to the original call between Mr E and this service in which he acknowledges he should have read the documents provided and although he doesn't recall all the information from the meeting, he accepts he would still have transferred his plans as he felt he was

getting a poor return on his investments with Aegon. I have therefore not considered this element of Mr E's complaint any further.

I have then considered the withdrawal request in June 2017. SJP have provided the letter sent to Mr E dated 12 June 2017.

It says:

*Further to our meeting on 13 February 2017 and the recent anniversary of your drawdown schemes, I am writing to confirm our discussions regarding your two St James Place Drawdown plans and your flexible drawdown plan.*

The details of how Mr E should continue to take his income are then set out, but the letter goes on to say:

*However, a previously unforeseen change in your circumstances means that you now require an immediate sum of at least £105,000 after tax and early withdrawal charges have been taken into account in order to be able to proceed with a property purchase and you wish to take this sum from your pension funds.*

And

*We calculate that in order to be reasonably certain of receiving this net sum within the timescales required by your Solicitor, you would need to fully encash all three of your plans. However, this would leave you with no further pension funds held with St. James's Place. In order to permit withdrawals at this level, your two 'capped' plans will first need to be switched into Flexible Drawdown Plans in order to enable the unlimited withdrawals available under flexi-access drawdown.*

*All three plans are within their first 12 months and early withdrawal charges apply during the first six years. This means that there will be anticipated early withdrawal charges at 6% or £12,668 on the withdrawal, giving you a taxable income of £198,468.*

*As you have previously received an ad hoc payment of £37,041 during the current tax year so you already expect to pay some higher rate income tax at 40% this year. Taking the withdrawal of all of your drawdown funds will mean that your overall taxable income will be in the region of £255,509 when the state pension is included.*

*We currently estimate that this means you will be paying income tax at the 40% rate of approximately £41,184 and a further £42,979 at the 45% rate on the payment of £198,468 but there are several factors that could affect this, and the actual figures will depend on the fund values on the day of encashment and the tax calculations performed by our Administration Centre.*

*Based on these estimates, you would receive a 'net' payment of approximately £114,304 after charges and tax deductions, meaning your objective of receiving at least £105,000 should be achieved. However, it is possible that you will need to produce a tax return to recover any excess payment if any excess tax has been paid.*

*If after considering the consequences of making these withdrawals, you still wish to encash your plans I recommend you request a payment of all funds held within your plans. Using the information, you have provided this means your marginal rate of income tax will be at the additional rate of 45% and you will also lose your personal allowance. You are already using your other liquid assets for the property so you have no alternative funds that could be used.*

I'm persuaded that this letter made it very clear the costs and tax implications of proceeding with the withdrawal in order to purchase the property. I'm not entirely sure why Mr E did not receive the letter as it is addressed correctly, and all other letters seem to have been received without issue.

I can also see Mr E signed the withdrawal form to encash all funds on 13 June 2017. I have also considered the two emails dated 22 June 2017 and 23 June 2017. The first confirms Mr E is shocked by the amount of the tax implications and early withdrawal charges, which indicates he was aware of them at that point. The latter confirms specifically that he knew what the amounts would be and that he may lose the sale or ask the seller to wait until he sells another property.

As I explained earlier, where the evidence is unclear of being challenged I must look at the wider circumstances and reach a decision on a balance of probabilities. I haven't seen anything to suggest Mr E was unaware of the tax implications or the early withdrawal charges, in fact the reverse, he confirmed in his email that he was shocked at the amount, indicating he did know. His email suggests that he wanted to secure this property purchase and in signing the withdrawal and confirming he wished to encash all his funds – this would seem to have been the greater priority.

This is further supported by the telephone call notes from November 2017, which refer to Mr E expressing his regret at making the decision to withdraw his funds, his acknowledgement that he knew what the tax charge would be but that he had forgotten about the early withdrawal charges. The notes show that his adviser referred him to the Suitability letter and the earlier withdrawals he made also detailed that there are early withdrawal charges in the first six years. The notes go on to say that he wasn't really clear that he would be encashing all the plans as he ended up with £13,000 more than he needed and suffered a termination charge. The notes make it clear that the adviser said she could only address this if he wished to make a complaint, which the notes go on to say - he did not. The notes say Mr E wanted to look at a way to "soften the blow" of the charges he had to pay.

The notes then go on to record discussions about the possibility of claiming back tax and increasing payments into his wife's pension to maximise any tax relief available. On balance, I'm persuaded Mr E was aware of the tax implications and although he may not have remembered the early withdrawal charges, I find that it was clearly addressed in the letter dated 12 June and referenced by him in his call to SJP on 22 and 23 June 2017. At this point Mr E had clearly seen the letter and intended to proceed I haven't seen anything to suggest Mr E asked to stop any of the payments or that he asked for advice on alternative methods of funding his property purchase. On that basis, I have concluded it was reasonable for SJP to continue with the fund withdrawals.

I have considered that a representative said it may be possible to reinstate his funds and this was indeed an error. But I have to consider whether that had a material impact on his decision. Mr E had already signed the forms to withdraw all his funds and had indicated the urgency of accessing the money to purchase a property. So, whilst the information wasn't correct, I haven't seen anything to lead me to think this aspect alone would have made a difference.

I'm not privy to the exact details of the conversation and I can see SJP apologised if what was said caused confusion. The re-instatement of a pension and repayment of income is largely governed by HMRC. Unless there is an exceptional circumstance caused by an administrative error, it would be highly unusual for HMRC to allow this due to the pension regulations. So, as Mr E requested and agreed the withdrawals, I'm not persuaded his pensions could be re-instated.

I do of course sympathise that in a short space of time thereafter, the payments were already in progress including the charges and tax deductions and subsequently the property purchase fell through. But I'm not able to say that SJP acted in anything other than his best interests in pushing through the income withdrawals quickly as Mr E requested.

### **My final decision**

For the reasons I have given I don't uphold this complaint and I make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 23 November 2023.

Wendy Steele  
**Ombudsman**