

## **The complaint**

Mr H complained to St. James's Place Wealth Management Plc (SJP) about advice it provided when he tried to access tax free cash (TFC) from his pension.

## **What happened**

In February 2021 Mr H spoke with an adviser from SJP as he wanted to take the TFC from his SJP Retirement Account. The adviser completed a fact find, which recorded the following:

Mr H was age 66, married and had not been working since April 2020. So he had no income. His wife was also not working having been made redundant but she received £300 per month universal credit, this had recently been reduced from £500.

Mr H owned his house jointly with his wife but they had an outstanding mortgage. He had £4000 in his bank account and he had a car collection worth £10,000. The income and expenditure noted that Mr H had monthly outgoings of £2,162.75.

In terms of Mr H's retirement planning the fact find recorded that he held a SJP Retirement Account.

Mr H spoke with the adviser again in May 2021. During this call he explained that he had an urgent need for his TFC as he had been unemployed since April 2020 and had an immediate need to generate an income from his pension. And he had therefore decided to retire and start taking his state pension.

The suitability report, which was issued in May 2021, set out Mr H's circumstances and said that drawdown had been discussed. However, as Mr H didn't have any other investments he could rely on, this was not a suitable option for him. As such, the adviser's recommendation was that Mr H take his TFC and use the remainder of his fund to buy an annuity, which would provide him with an income for life. The adviser set out a number of annuity options for Mr H to consider.

Mr H didn't accept the adviser's recommendation because he wanted to take his TFC and move the remainder of his funds to a drawdown plan. The adviser advised Mr H that if he wanted to proceed with drawdown, he would need to contact another firm to arrange this as it wouldn't be possible through SJP.

In early June 2021, SJP received a letter from a third party financial adviser, requesting information on Mr H's SJP Retirement Account. However, Mr H hadn't signed the enclosed letter of authority, so SJP was unable to provide any information to the new firm.

Around the same time the letter was received, Mr H called SJP's contact centre. He said he'd been in contact with his SJP adviser about taking his TFC and moving his remaining funds to drawdown but when he received the paperwork, the adviser had suggested an annuity. Mr H explained that he had since spoken to the adviser who had said drawdown wasn't possible because of an FCA rule which only allowed drawdown if the investor had

more than £30,000 in their bank account. Mr H said that he had called the FCA and it had told him it wasn't aware of any such rule and it had suggested he contact SJP to verify this.

The call handler at SJP said that he also wasn't aware of this rule. Mr H confirmed that he still wanted to take his TFC and the call handler said that he would go ahead and arrange this for him. However, I understand that SJP has since said that this wouldn't be possible as drawdown wasn't appropriate for Mr H. Ultimately Mr H transferred his plan to another provider as SJP would not allow him to go into drawdown.

Mr H complained to SJP. He made two complaints, one about the service he had received from the contact centre and one about SJP's recommendation and it not allowing him to move his fund into drawdown.

In terms of the complaint about the suitability of advice provided by SJP, a final response letter was emailed to Mr H on 23 September 2021. SJP rejected the complaint because the adviser had explained why Mr H was unable to move his funds to a drawdown plan at that time. SJP acknowledge that another firm has been in contact to request information about Mr H's plan so it assumed that he would be transferring the plan elsewhere so he could access his benefits via drawdown. SJP offered Mr H £250 for the delay in responding to his complaint.

Mr H responded to SJP. He said the reason he was told he could not have his pension was because he didn't have £30,000 in his bank account. Mr H also explained he had needed his TFC so he could buy an automatic car for his wife. He'd now taken a loan out and intended to take the complaint further and claim interest and charges for the loan along with a payment for the stress and inconvenience caused.

Mr H didn't accept SJP's response so the matter was referred to our service for consideration.

One of our investigators reviewed matters. The first thing the investigator did was ask Mr H for clarification of his complaint. The investigator noted that Mr H had two complaints with SJP, the first one was about Mr H's request for drawdown and the advice he received in relation to this. The second (SJP complaint ref beginning with SJR) was about Mr H's experience with SJP's Contact Centre.

In his email to this service dated 30 June 2022, Mr H confirmed that it was the main complaint (beginning with RSP) that he wanted the Financial Ombudsman Service to consider.

The investigator reviewed the complaint but didn't think the advice given to Mr H was unsuitable. She said that she hadn't seen that Mr H had been told he had to have £30,000 in the bank in order to move to drawdown. But she appreciated there had been discussion around Mr H's assets as part of an assessment of his capacity for loss and that eligibility rules for the SJP drawdown plan may have been mentioned. However, the investigator said that even if the adviser had said Mr H needed to have a certain amount in his bank account, she thought SJP had a reasonable basis for not offering Mr H the drawdown option.

Mr H disagreed. He was amazed the investigator had condoned SJP's actions. He said it had deliberately taken longer than 8 weeks to review his complaint and he had suffered a loss by being forced to move his pension and by having to take a loan because SJP refused to sort the issue out.

Mr H's further comments were reviewed but the investigator maintained that the advice given to Mr H was suitable. And she said that SJP wasn't obliged to offer Mr H drawdown if it didn't think it was appropriate for him. The investigator also noted that SJP had offered Mr H £250 for the delay in dealing with his complaint which she thought was fair.

Mr H still disagreed. In summary he said:

- The annuity would have paid approximately £203 per month for 10 years with no income after that for his wife if he died. He did not think this was good enough as he would have no capital to fall back on, and certainly not the £30,000 SJP said he needed.
- SJP told him that he needed a bank account with a very large amount of cash in it before he could put his pension into drawdown. At no time did it say it was not possible to do what he wanted due to it being a new contract. He assumes SJP would make less profit from drawdown than by selling an annuity.
- He lost money by SJP charging fees for him having to move to another provider, fees from the new provider, and interest on a loan he was forced to take out, and the stress of being passed around SJP from person to person with no outcome from anyone.
- SJP ignored the 8 week rule, which he believes it intended to do from the outset as it was already put forward in an email that it was a probability.
- He didn't receive the email from SJP with the final response and so he'd not been offered any compensation. And the person that sent the final response was not who he was dealing with.

The complaint has been passed to me to decide.

### **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.

I'd firstly I'd like to confirm that I'm only considering Mr H's concerns about the advice he received from SJP's adviser regarding drawdown not being appropriate for him. I've not considered the service he received from the contact centre as this was dealt with separately and Mr H has said that he didn't want us to look into this.

Having reviewed all the available information, I agree with the outcome our investigator reached. I think the advice provided was suitable. I'll explain why.

It wasn't possible for Mr H to access his TFC and keep the remaining funds in his SJP Retirement Account. As set out in the policy terms and conditions, once he had accessed the TFC, he had to use the remainder of the fund to either purchase an annuity or set up a new plan that allowed drawdown.

I know drawdown was Mr H's preference and that, ideally, he wanted to arrange this through SJP. However, SJP's adviser didn't think it was appropriate in Mr H's circumstances. I've considered Mr H's circumstances and I don't think SJP's advice was unsuitable.

It may help if I explain that drawdown isn't actually a product, it's a way taking benefits from a pension pot. Mr H couldn't drawdown his benefits from his existing Retirement Account; he would have needed to move his benefits into a new product, as set out in the Retirement Account terms and conditions.

Drawdown is often facilitated through a self-invested personal pension (SIPP), where after TFC is taken, the remaining funds continue to be invested – so the value can go up as well down. And additional charges would apply to new arrangement and for the individual investments within the new arrangement. So funds will be eroded if the income drawn and charges exceed the growth achieved.

This means that drawdown isn't suitable for everyone. And firms often set their own guidance for advisers to follow when assessing an individual's suitability for drawdown. SJP has confirmed that its own guidance states that drawdown may not be suitable for investors with no or minimal investment experience, low assets and no real capacity for loss. And it says that in such circumstances essential income needs should be met using guaranteed sources of income.

In the case of Mr H, other than his state pension, it seems he had no other sources of guaranteed income in retirement. And he had limited savings and assets. So I don't think it was unreasonable for SJP to say that drawdown wasn't appropriate and instead securing a guaranteed income was more suitable.

Mr H says that he was told he had to have £30,000 in his bank account in order for drawdown to be approved. I've not seen any evidence that he was told this. But I accept that this may have been Mr H's understanding of the conversation he had with the adviser.

I think it's likely that the adviser told Mr H that the reason he couldn't recommend a drawdown arrangement was because he only had very limited capacity for loss. If the funds in his drawdown arrangement didn't perform well, any reduction to his investment would have a considerable impact on Mr H's plan and the amount he would be able to draw from the plan. Investors with smaller drawdown plans and no other form of income, often find that they run out of money and are left with no income at all in retirement. However, the income payment from a lifetime annuity is guaranteed for life and so is paid out until the investor dies. For this reason, I don't think SJP's advice to Mr H was unsuitable.

I know Mr H thinks SJP's decision was based on the profit it could earn as he assumes it would have made more from an annuity than a drawdown arrangement. However, I don't agree that this was a factor when SJP considered what was suitable advice. And in any event, I think it's unlikely the annuity would have provided more profit. Once the annuity was established, that would have been the end of SJP's involvement with Mr H. However, if he'd moved to a drawdown arrangement, as I've said above, there would have been ongoing fees and often there is a need for the investments held within a drawdown arrangement to be reviewed so this could have led to further fees for on-going advice.

Mr H also says he lost money by SJP charging fees for him having to move to another provider, fees from the new provider, and interest on a loan he was forced to take out, and the stress of being passed around SJP from person to person with no outcome from anyone.

However, I'm not aware of SJP charging a fee for Mr H transferring. I can see from the statement on file that the encashment value of his plan was the same as the current unit value (fund value). And the statement confirms that where this is the case, no early withdrawal fees apply. Mr H's plan was invested in 7 individual funds/assets and the units within these individual funds were subject to market conditions, and the value fluctuated regularly. So, rather than paying a fee to SJP for transferring his plan, I think it's likely that his fund value reduced between the value being confirmed and the fund being transferred.

This isn't something I can hold SJP responsible for, it's the way his Retirement Account worked. Mr H would have received the value of the units at the point it was transferred.

And I think it's important to explain that even if Mr H had moved to a drawdown arrangement through SJP, there would still have been a fee for setting up the new arrangement. So I don't think Mr H has lost out by having to pay a new firm to do this for him.

I know Mr H says that, because of the delay in accessing his TFC, he was forced to take a loan to cover the cost of a car he needed urgently for his wife. But I'm not asking SJP to cover any costs involved here. I'm satisfied the adviser's advice was suitable. And the adviser made Mr H aware in late May/early June 2021 that he would need seek advice from another firm if he wanted to pursue the drawdown route. I can see that Mr H started the process of doing this in June 2021 but he didn't sign the letter of authority and so SJP were unable to provide the new advising firm with information about his plan. SJP advised the new firm that the letter of authority wasn't signed but no new instruction was received at that time.

I've not considered any delays that may have occurred or the service received after Mr H contacted SJP's contact centre. These issues were dealt with separately by another firm within the St. James's Place group - St. James's Place UK Plc. Mr H confirmed to our investigator that he only wanted us to consider the advice he received and the service in relation to that.

For the reasons explained, I don't think the advice was unsuitable; it wasn't unreasonable for the adviser to conclude that drawdown wasn't appropriate for Mr H, given his circumstances and limited capacity for loss. And I'm satisfied that Mr H was made aware by the adviser what he needed to do if he wanted to arrange drawdown through another firm. So I'm not upholding this part of Mr H's complaint.

Mr H has concerns about the length of time it took SJP to consider his complaint and issue its final response. It should have been issued by 10 September but it was issued just under 2 weeks later. I can understand why this delay caused Mr H concern. He was waiting to hear if the adviser had provided incorrect advice and whether he would be permitted to take his TFC and drawdown through SJP.

SJP offered Mr H £250 for this delay which I think is fair in the circumstances of this complaint.

I know Mr H told our investigator he didn't receive SJP's final response and so wasn't aware of this offer. But I can see that he did respond to the email SJP sent him which had this letter attached. So I'm satisfied it was received although I do appreciate Mr H may have overlooked SJP's offer.

I think it's important for me to recognise Mr H's strength of feeling about this matter and I realise he will be disappointed with my decision. But I think the advice SJP provided was suitable and I think its offer of £250 for the delay in issuing the final response is fair. So I'm not asking to pay Mr H any more than this.

### **My final decision**

For the reasons explained, I uphold this complaint in part. If it's not already done so, I think St. James's Place Wealth Management Plc should pay Mr H £250 for the distress and inconvenience this matter has caused him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 28 April 2023.

Lorna Goulding  
**Ombudsman**