

Ombudsman's Determination

Applicant	Mr D
Scheme	James Hay SIPP (the SIPP)
Respondent	James Hay Partnership (JHP)

Outcome

1. I do not uphold Mr D's complaint and no further action is required by JHP.

Complaint summary

2. Mr D has complained that JHP did not deduct enough tax on a one-off payment from the SIPP. As a result, Mr D received an unexpected tax demand, of around £14,000, from Her Majesty's Revenue & Customs (**HMRC**).

Background information, including submissions from the parties

3. In 2002, Mr D transferred his benefits from his former occupational pension scheme into the SIPP. He took a tax-free lump sum and started drawing down monthly income from the SIPP.
4. JHP deducted tax on the income payments based on the tax code provided by HMRC.
5. In 2016, Mr D notified JHP that he wished to withdraw the remainder of his funds from the SIPP, in order to pay off his mortgage.
6. On 26 August 2016, JHP received Mr D's completed benefit payment form (**the Form**), which included his instruction to close the SIPP once final payment had been made.
7. The Form contained a recommendation for the member to seek advice, including tax implications, from Pension Wise or a financial adviser before completing. When completing the Form, Mr D confirmed that he had sought advice from Pension Wise.
8. By signing the Form, Mr D also agreed that he understood that, "drawdown income or 75% of any uncrystallised pension commencement lump sum will be paid after deduction of income tax at [the member's] marginal rate".

9. On 30 September 2016, Mr D received a net payment of £56,137.89. His payment notification showed that Basic Rate tax, of £14,034.40, had been applied to the gross payment of £70,172.29.
10. On 5 October 2016, JHP wrote to Mr D to confirm the details of the final payment from the SIPP. This letter said, "Tax will be deducted at source from the flexi-access payment using the Tax Code provided by [HMRC]".
11. In January 2018, Mr D contacted HMRC to notify it that he had earned additional income. He was informed that he would need to complete a tax return.
12. Following this, Mr D received an HMRC tax demand, which included an amount of £14,000 on the payment from the SIPP. HMRC's letter informed Mr D that the one-off payment from JHP had been taxed at 20%, at Basic Rate, but that he was due to be taxed at the Higher Rate on the SIPP income payment. Mr D set up a monthly payment plan with HMRC for the outstanding amount.
13. In August 2018, Mr D raised a complaint with JHP. He argued that JHP should have applied the Higher Rate tax on the gross income payment from the SIPP.
14. On 22 September 2018, JHP responded to confirm it did not uphold Mr D's complaint as it had applied the tax code provided by HMRC for the payment. It said that it is for HMRC to determine which tax code JHP should use.
15. Unhappy with this response, Mr D asked my Office to investigate. Mr D argued that JHP should have applied the Higher Rate tax code to his final income payment. He has been able to pay the outstanding tax amount over 10 months, but had to use up his savings and take out a loan to meet these payments.

Adjudicator's Opinion

16. Mr D's complaint was considered by one of our Adjudicators who concluded that no further action was required by JHP. The Adjudicator's findings are summarised below:-
 - JHP applied the tax code issued by HMRC.
 - Mr D had confirmed he had liaised with Pension Wise, as recommend by JHP, who would have been able to set out the tax implications for Mr D.
 - JHP cannot provide financial advice.
 - The payment advice issued in September and October 2016 confirmed to Mr D that the Basic Rate tax code had been applied to his payment.
 - It was for Mr D to consider whether he had received a payment that could be subject to further tax deductions, and to contact HMRC to verify this.

- Mr D has paid the tax he would always have been due to pay, despite this being some time after the payment from the SIPP.

17. Mr D did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr D provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion and note the further comments made by Mr D.

Summary of Mr D's response

- He does not agree that his discussion with Pension Wise absolves JHP of the responsibility to apply the correct tax code.
- JHP told him in a telephone call that it would liaise with HMRC about the tax code.
- The Basic Rate tax code JHP used was the tax code that had been in place for around 15 years, as he took regular income payment. JHP should have known to apply a different tax code for the higher final payment from the SIPP.
- JHP should have known he owed more tax because it would have been clear that a payment of over £70,000 could not be taxed at Basic Rate.
- When issuing the letter to confirm the final payment, and closure of the SIPP, JHP should have told him that it had only deducted a partial tax amount and that he needed to take action to settle the remainder.
- JHP exposed him to a tax liability.

Ombudsman's decision

18. JHP's role is to administer the SIPP. It is not authorised to provide financial advice, which would include tax advice. Mr D has said that JHP told him it would liaise with HMRC about the correct tax code. JHP can only apply a tax code as supplied by HMRC; it is not permitted to adjust this. There is no evidence to suggest that JHP applied a tax code that was not in line with the information provided by HMRC for Mr D.
19. Mr D has argued that it would have been clear that a payment of over £70,000 would need to be taxed at a higher rate. I agree with Mr D, that any individual receiving a payment of over £70,000 ought reasonably to have known that this was above the threshold for Basic Rate tax. Mr D received the payment in the 2016/17 tax year, at which time the Basic Rate maximum threshold was £32,000. This information is readily available on the HMRC website.
20. Mr D liaised with Pension Wise before proceeding with the payment from the SIPP. Pension Wise would also have known that the amount would exceed the Basic Rate limit, and could have verified this with Mr D.
21. I note that Mr D's actions in 2018 show that he was familiar with contacting HMRC to report additional income. JHP confirmed to Mr D that it had applied only Basic Rate

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tax. Mr D ought reasonably to have known that his payment far exceeded the Basic Rate threshold. If Mr D had any doubts about this, he could have checked with HMRC or Pension Wise at the time.

22. Mr D has argued that JHP exposed him to a tax liability. However, Mr D would have always been due to pay the full tax amount at the Higher Rate, so I do not find that he has suffered a financial loss.
23. I do not uphold Mr D's complaint.

Anthony Arter

Pensions Ombudsman
3 September 2020