DRN-4085647

The complaint

Mrs T has complained about St. James's Place Wealth Management Plc (SJP) retrospectively adding charges to her plan, underperformance of her funds, and the suitability of the adviser to transfer her personal pension to SJP. Mrs T complained jointly with Mr T but subsequently the complaint was split and so Mr T's complaint whilst similar in nature is being considered by me under a separate case reference

What happened

Before the issues that have been complained about, Mr T & Mrs T and other members of their family had been customers of SJP for a number of years. There were numerous communications with SJP before the issues of complaint arose, with a number of contributions made from 2006 to 2013.

Mrs T first complaint point dates back to 2013 when she was advised to transfer her existing personal pension valued at approximately £685,000 across to SJP to be held alongside plans that she already had with it. The other members of the family also held significant assets with SJP.

A suitability report was produced in March 2013 which was addressed to Mrs T. The objectives recorded were:

- Mrs T wished to consolidate her pensions to make the administration, reviews and monitoring of her plans simpler.
- Would like her funds to benefit from SJP's independent fund managing monitoring, as she believed this would give her the best opportunity for growth. Mr and Mrs T already had extensive experience of this through their existing pensions and therefore she wished to take the same approach with her personal pension funds.
- Higher charges were not an overriding concern.
- The suitability report set out the charges of the existing plan as 0.875%, against new charges post transfer of 1.25% plus external fund management costs. The report detailed that there was no guarantee that SJP would outperform the current plan. It was stated that the existing policy had been invested in cash since 2009 when the plan reached its normal retirement date (although Mrs T now disputes that it was in cash).

The suitability report was addressed to Mrs T's address. Following this meeting the adviser sent a letter to Mr and Mrs T saying:

'*Could you and Mrs T please sign the attached Client Declaration forms and return them to me in the enclosed envelope? I forgot to ask you to sign them when we met last week. Thank you.*'

The declaration said.

'I hereby confirm that the contents of this letter and report have been explained to me and that I have fully considered all the relevant information to enable me to make an informed decision on the proposed recommendation set out above.

In particular I understand that future investment performance cannot be guaranteed and both income and capital available from my pension funds may be lower in future than as illustrated in this report and when compared to the alternatives.

I also understand that there will be no early withdrawal charge when I make a drawdown or take my pension from the fund which is being transferred from redacted to St. James's Place.'

The declarations were sent back and Mrs T had signed the declaration and dated this 25 June 2013.

In 2019 a summary of charges was issued. Within this report it also sets out the charges applied to other members of the family and Mrs T's charges are shown to be at 1.29% to 1.39% and the other family members are shown to have charges at around 1.7% with Mr T's charges higher again at around 2%.

This appears to be the beginning of Mr T & Mrs T's unhappiness with SJP. Meeting notes from later in 2019 show that Mr & Mrs T were considering transferring their agency to another firm and SJP were looking into if they could reduce their fees for the family to the level Mrs T was being charged. It said Mr T had stated if SJP could make a profit of 1.3% on Mrs T's funds it should offer the same for the rest of the family.

Following this SJP contacted the family to explain that Mrs T's charges had in fact not been around 1.3% as previously stated but the standard charge of 1.25% plus investment charges. It apologised for this error and the confusion this had caused.

It also confirmed it would give the family a special offer with the standard charge being reduced to 1.05% for existing funds and 0.8% for all new investments. It explained both would still be subject to the specific investment charges.

In September 2020, Mr and Mrs T complained to SJP about a number of issues. I've summarised the issues below that relate to Mrs T:

- The performance was poor and below benchmarks. The information given made it difficult to understand this performance and understand which funds needed to be switched.
- Mrs T felt returns would have been better within the personal pension. She wished to be reminded of the reasons for the transfer being recommended.
- Too much of the funds were held in cash as this receives no return.
- The funds aren't invested correctly and corrective actions ought to have been taken.
- She was concerned SJP had backdated charges when the error was discovered.
- Key documents hadn't been shared.

SJP responded a number of times to the various complaint points as the complaints process progressed. I've summarised their responses below:

- It had apologised for the mistake regarding Mrs T's charging structure and agreed to reduce charges across the family.
- It showed that differences in fund allocations had let to the different investment returns.
- It said Mrs T's portfolio had outperformed the relevant Balanced Asset Index over the course of the year, and slightly underperformed over the course of 5 years but outperformed this index over a 10-year period.

- Mrs T's funds had remained within her attitude to risk, were affordable and matched her objectives.
- SJP stated they had found no evidence that supported claims she had never received the appropriate documents.
- They also provided a detailed commentary as to the differences in the performance of the family's portfolios, noting that some other members of the family had at times been exposed to higher risk funds that wouldn't be suitable for Mrs T. And that her funds were heavily UK Equity based, whereas your other family members had more of a US Equity weighting, which had outperformed the UK considerably.
- They concluded their response by offering as a gesture of goodwill, a sum of £2,000.

Unhappy with this Mr T raised a complaint jointly with Mrs T with our service. As the complaint related to different products and separate advice events, the complaint was split.

Our investigator looked into matters and concluded that SJP didn't need to do anything to put matters right.

He explained that whilst the transfer did mean that Mrs T would pay more in charges compared to the personal pension, he was satisfied transferring her funds to SJP to have them all in one place was a key objective of Mrs T's. And this was in line with the families' actions overall, having their investments all held under one roof.

The investigator concluded that the charges had been made in line with what had been agreed. In relation to the suitability reports, the investigator said the evidence supported that these had been sent. Evidence showed Mrs T had signed to agree she'd read the reports. Furthermore, he explained that poor performance in itself doesn't mean that a complaint should be upheld, markets fluctuate and he felt the investments made were in line with Mrs T's attitude to risk.

He said that whilst SJP had made some mistakes such as the erroneous charges listed in relation to Mrs T, it had given the family reduced charges and that was sufficient action to address this error. He concluded that SJP had not acted in a misleading manner regarding charges or disclosing information and were not responsible for any perceived underperformance of funds.

Mrs T responded to say she disagreed that it was reasonable to assume she'd received the suitability reports based on her signature to say so. She said she'd been naïve in signing the declarations without sight of the suitability report. But their family kept all their documents relating to advice but none had the suitability reports and Key Features documents in their possession.

She disagreed that the advisers had told her about the increased charges on transfer, she questioned when the meeting took place – if it was the 26 June as the investigator had implied she wasn't present. The adviser came round to meet with Mr T but she only said hello and wasn't involved further. The details of the Prudential transfer were not discussed with her. Mrs T said it would've taken a lot of time to go through this and she'd have remembered the meeting if it had occurred. Rather than sending the slip to sign after the meeting, good practice would've been to send all the information alongside the declaration.

She said her charges had gone up following the transfer from the personal pension provider, not only on her funds from that transfer but her existing funds as well. The transfer ought to have made no difference to her existing fund charges. She doesn't understand why the fees charged from the personal pension transfer were higher than her existing funds either, as the same strategy was applied to both.

She said the reduction in fees was to keep the family as clients and not as compensation as the investigator implied.

In relation to the performance of her fund Mrs T said the investigator hadn't commented on differences in information given by SJP in terms of performance. She alleged the complaints team had calculated the returns on a more favourable basis to placate her.

Mrs T also said the funds she'd actually invested in, didn't correlate with those in the suitability report so she was invested in the wrong funds. Her performance had been affected by the increase in charges that she hadn't been told about.

SJP chose to hold high levels of cash in her portfolio with no interest income being paid to her. And had invested a large amount of money in the property fund which had performed poorly and had an exit charge applied to it.

She said the investigator had not addressed the points about poor service in the extended time it took to answer the complaint and provide proper answers.

She argued that the investigator had implied that SJP offered £2,000 to compensate for the incorrect disclosure of charges. This is incorrect as SJP offered this to them for the stress and extended time it took for them to reply to the complaint.

The investigator responded to say:

The evidence he has seen is that documents were addressed to Mrs T and she signed to confirm she understood them. His conclusion was based on the evidence presented.

Regarding the charges, he considered that all charges were disclosed and charged appropriately. He agreed the charges did increase following the transfer of the personal pension, but the recommended funds all incurred separate charges, this would explain the disparity year on year. The suitability report made clear that the fund charges on top of the 1.25% management charge could fluctuate between 0.1% and 1% and the increase was in line with this range.

The disparity in the funds comes from different recommendations across the various reports issued. In some instances, the first set of funds were recommended, and in others the second set. Neither were outside Mrs T's risk tolerances and therefore cannot be relied upon as an error linked to Mrs T's belief the portfolio performed poorly.

The investigator didn't view SJP's use of different growth graphs being malicious, and it is reasonable that different teams assessing growth at different stages will use slightly different dates.

Mrs T disagreed with his view of matters and so the complaint has been passed to me an ombudsman at this service to reach 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.

Mrs T has made numerous points and submissions to this service and her complaint spans a number of years and interactions with SJP. However, my decision will concentrate on what I consider the crux of the complaint. This is not meant as a dis-service to Mrs T, I have read and considered all the evidence provided by both parties but it is not necessary for me to comment on everything raised. We are an informal dispute resolution service and my role is to get to the heart of the matter. My decision reflects this and whilst I've attempted to cover what I consider are the key matters for Mrs T, its ultimately up to me to decide what is relevant in deciding this complaint. As this complaint is very similar in nature to Mr T's complaint which I am issuing under a separate reference, much of the findings in this decision will be the same for Mr T's case. But for completeness I've set the same findings out in both decisions.

Having considered all the evidence and arguments, I agree broadly with the findings of the investigator. I will not repeat all those findings here, but I will explain the key reasons behind my decision.

Was the relevant information disclosed to Mrs T?

Mrs T says she didn't receive the suitability reports and key documents throughout much of her time with SJP and in particular in relation to the transfer in 2013. But as the investigator set out the evidence supports that Mrs T did receive this information. She signed to say that she did in 2013. The evidence shows a covering letter was addressed including the suitability report to Mrs T on 20 March 2013. And that following this the adviser had also written to Mr and Mrs T as he'd forgotten to get them to sign the forms to declare they'd understood the advice. (Mr T also received advice). The form enclosed said in relation to Mrs T's advice:

'I hereby confirm that the contents of this letter and report have been explained to me and that I have fully considered all the relevant information to enable me to make an informed decision on the proposed recommendation set out above.

In particular I understand that future investment performance cannot be guaranteed and both income and capital available from my pension funds may be lower in future than as illustrated in this report and when compared to the alternatives.

I also understand that there will be no early withdrawal charge when I make a drawdown or take my pension from the fund which is being transferred from redacted to St. James's Place.'

Mrs T said she was naïve to sign it without seeing the suitability report and other documents. But if Mrs T didn't have a copy of the report or hadn't seen it, I think she ought to have requested it then. There is an obligation on individuals to mitigate any known errors, so had Mrs T felt she hadn't fully understood or she didn't know the reasons for transferring or felt SJP had withheld information from her, it was for her to let SJP know then. I don't think on the balances of probability Mrs T would've agreed to transfer a pension to SJP without any knowledge of the reasons for doing so.

Furthermore, the evidence shows that across the years and advice, SJP included covering letters with its suitability reports and these were correctly addressed. Whilst I don't have proof they were received, on the balance of probabilities I think it's likely they were.

I think it is reasonable for SJP to have believed that Mrs T was happy with the arrangements discussed once Mrs T signed to agreed to them. And as I've said if Mrs T didn't feel she fully understood matters or key information hadn't been divulged she ought to have raised that then.

I've thought about what Mrs T has said and what she thinks SJP ought to have done when it sent her the declaration, but ultimately the evidence doesn't support that SJP withheld or failed to disclose key information to Mrs T.

The reasons for transferring the personal pension, was the advice suitable?

Only after 2019 when performance concerns arose and the issue with charges occurred has Mrs T complained about the transfer process. Had Mrs T not understood the reasons for transferring her personal pension, I'd have expected this to have been raised much earlier.

The suitability report clearly set out the reasons why Mrs T wished to transfer her pension. One of her objectives was to gain access to the same advice offerings and investment strategy as her existing funds, and where her other family members also held their investments. I agree with the investigator, looking at the circumstances this appears to be a genuine objective of Mrs T's. She already had existing investments with SJP and the fact that she considered transferring her personal pension as well suggests she at the time valued the service and performance she'd been receiving from SJP.

The downside to transferring was the increase in costs and the potential this could have on performance but this was set out by SJP. So I think Mrs T ought to have been aware of this when she agreed to transfer based on the recommendation by SJP that transferring met her objectives. And I think transferring was what Mrs T wished to do so prior to the advice as it follows a clear plan that was followed by other members of the family – to put all their investments in one place. Which was also one of Mrs T's recorded objectives.

Mr T had previously transferred all of his pension holdings to SJP (with some limitations due to the lifetime allowance), and her daughters funds were all held by SJP, and it is clear from the complaint correspondence that the pensions and investments held by Mr T and Mrs T were seen as an overall family portfolio. So with this in mind, it makes sense that a large proportion of Mrs T's funds being held elsewhere would've prompted the consideration of a transfer to SJP.

It appears this is a complaint issue based on performance but there is no guarantee that Mrs T's funds would've performed better with the personal pension, especially if they were held in cash as was recorded at the time. Although Mrs T now disputes this. And the market conditions that caused the perceived poor performance here, could well have been apparent if Mrs T was invested in the personal pension in any event.

Overall given Mrs T's recorded objectives and her circumstances at the time, I don't think the recommendation to transfer these funds to SJP to match the existing arrangements in place for the family was unsuitable.

Has SJP made a mistake in the charges it has applied to Mrs T's portfolio?

Mrs T believes she has been overcharged by SJP, she alleges she was not told about the increase in charges when she transferred into the personal pension and doesn't understand how this increased charges across the board with her investments with SJP. And that on discovery of its mistake in the charges calculated for Mrs T's plan, SJP backdated the actual charges it should've taken from Mrs T's portfolio to recover its losses.

As part of the complaint correspondence with Mrs T's family, SJP set out the charges applicable to each family member. As explained above within this it erroneously set out Mrs T's charges as being quite a bit lower than they actually were and lower than other members of the family. Mrs T's charges were the lowest at around 1.3% per annum whereas the other family members were around 1.7%. The charges fluctuated but remained roughly within 0.5% difference across the years.

When Mrs T transferred her personal pension in 2013, the charges were set out and it was explained the overall charge could fluctuate as this was dependant also on specific fund charges. Whilst the charges did increase following the transfer, SJP has explained that the base rate of charging had remained the same and the fluctuations were due to the differences in fund selections. I've seen nothing to suggest that this isn't correct. And it was outlined in the suitability report that charges would also depend on the specific investments held.

I've also seen nothing to suggest that SJP backdated the charges retrospectively and reduced the value of Mrs T's funds due to its error. It has explained the lower charges were a result of a mistake in the calculations made when it produced a breakdown of all the charges on request. This error was acted on and SJP then produced the actual charges applied, which were broadly in line with the other family members and the charges agreed to.

The result of this seems to be that the family saw the lower charges erroneously set out as representative of what she and the rest of the family should be charged. Subsequently SJP agreed to reduce the charges for all the family, to a special rate below its usual charging structure. Whilst it had made an administrative error in relation to Mrs T's documented charges, I think this goes beyond anything I would expect a business to offer for what was just a calculation error that had no financial effect. I understand Mrs T has said this offer was made to keep it as customers and not as compensation but regardless I don't think SJP is required to do anything more to put this error right for Mrs T.

That Mrs T's charges have increased since the transfer doesn't suggest an error has occurred, as it was explained her charges would fluctuate as they were in part dependant on the funds selected. Mrs T also didn't understand why there was a difference between the charges applied to her existing investments and her transferred personal pension funds, as they had a similar strategy applied to both. But any difference in fund selection could account for slightly different charges being applied. SJP confirmed Mrs T's base charges had been charged in line with the agreed charging structure but fluctuations would be present due to the individual fund charges. I've seen no evidence to suggest this is incorrect.

In conclusion, I think Mrs T was charged fairly and in line with what was agreed and the costs of the various funds and products.

Investment performance

Mrs T holds SJP responsible for what she believes constitutes poor performance of her portfolio and she's compared this to other family members who've had better performance. She believes this is due to the charges that she believes weren't disclosed in 2013 and has raised concerns about the selection of her funds including too much being held in cash and a property fund which was frozen.

Poor fund performance on its own is not a reason to uphold a complaint, Mrs T was aware that her fund performance wasn't guaranteed and could fluctuate. That her funds performed differently to other family members is not a surprise nor a reason to uphold the complaint. This is explained by the fact that they were invested in different funds and so the performance will differ. Poor performance would be considered potentially as a reason to uphold a complaint if this was due to the unsuitability of the investments for a customer. But I don't think this reason is present here.

Mrs T was recorded as having a medium attitude to risk. I've looked to see if the overall risk exposure of the portfolio was in-line with a medium risk investor and I think Mrs T's portfolio was invested in a way that was broadly suitable for her. So I don't agree that SJP should compensate Mrs T for her belief that her portfolio has seen poor returns.

Mrs T has raised concerns with her investment in the property fund which was frozen and would require an exit penalty to leave. But as I've said I think the portfolio was suitably balanced and a common issue with investing in property are liquidity issues. The fund in question was suspended due to a high level of withdrawals that couldn't be supported at that time without selling assets from within the fund. But I can see the adviser exchanged correspondence and had conversations with Mr T (on behalf of the family) about the property fund, so I don't agree that sufficient attention wasn't paid to this. The fund in question was rated as medium so it wasn't something I'd consider shouldn't have been part of Mrs T's portfolio. And the investment in property was part of a diversified portfolio, so I don't think Mrs T was overexposed to the risks inherent in investing in property.

Mrs T has also raised concerns with the amount of cash held in her portfolios and the fact that she wouldn't receive returns on this. Firstly I should say that holding a small amount of cash in a portfolio is not unusual and is a normal part of a diversified portfolio. It can help reduce the risk of a portfolio but also allow an investor or investment manager to move funds quickly if a new investment opportunity arises. And a cash balance is often required to pay charges and fees. So I don't think holding cash within Mrs T's portfolio would've necessarily been unsuitable. But having looked at Mrs T's investment portfolio breakdown, I think the high level of cash she refers to is the holdings within the actual funds and not Mrs T being directly invested in cash. Mrs T was invested in a mix of funds and within those funds the fund managers held various levels of cash. This is very common (especially in property funds) as fund managers use it to make new investments within the fund, to balance risk, and to ensure funds are available for disbursements. So, I don't think SJP did anything wrong here.

Whilst I can understand that Mrs T hasn't received the performance she was hoping for from her fund and that this is disappointing, I don't think this was due to anything SJP did wrong. It managed her portfolio in line with her attitude to risk but unfortunately returns can't be guaranteed and market conditions have at times been difficult.

Conclusion

In conclusion I don't think SJP needs to do anything more to put things right. I think it did set out its charges to Mrs T and charged her in line with what it agreed. Furthermore, it offered Mrs T and her family special terms when they initially complained about their charges, and they agreed to these new terms. Mrs T's portfolio was invested broadly in line with her attitude to risk and so I don't think it did anything wrong here.

I note that SJP offered £2,000 to attempt to settle the matter amicably and as compensation for the time taken looking into the complaint. This relates to complaint handling and not the merits of the case, which is not something this service can make awards for. But I note the investigator asked SJP if this offer remained open and it said it did. So if Mr and Mrs T wish to accept this, they need to contact SJP to arrange this directly.

My final decision

For the reasons explained above, I do not uphold this complaint and make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 1 March 2024.

Simon Hollingshead
Ombudsman