DRN-4109405

The complaint

Ms M complains that Alexander Associates Group, an appointed representative of St James's Place Wealth Management Plc ('SJP'), failed to advise her about her pension which has led to her missing out on tax relief and additional pension benefits over several years. SJP is responsible for the actions of the adviser and so I'll refer to SJP in my decision.

What happened

Ms M was introduced to SJP by her employer in 2013. SJP provided a wealth management service which included ongoing advice with regular review meetings.

The adviser met with Ms M in March 2013 where the main focus seems to have been on inheritance tax (IHT) planning. They also discussed a life cover policy and saving products for her and for her son.

An email in January 2014 from the adviser to Ms M states that *"Aside from IHT, the priority is making your savings work much harder for you, in a more tax efficient manner".* It was noted that Ms M had £500,000 in cash savings which was losing value due to low interest rates and inflation.

SJP mentioned an investment bond she could invest in and that Ms M could make use of her ISA stocks and shares annual allowance.

Further meetings were meant to be arranged. In March 2014, Ms M signed a form to become a client of SJP and transferred an ISA. I think it's accepted that no further meetings or advice happened after that.

SJP have admitted that in 2015 Ms M's adviser left the company and she was passed on to another SJP adviser. Due to internal errors the new adviser wasn't informed and so Ms M received no advice; and no review meetings happened between early 2014 and 2018.

In 2018, the new SJP adviser contacted Ms M. He explained the concept of tax relief on pension contributions to Ms M. It was suggested she should contribute around £13,000 into her occupational pension, a defined benefit (DB) scheme, and consolidate her personal pension into her SJP portfolio. Meeting notes show that the adviser spoke to another department within the firm who confirmed it was in Ms M's best interest to maximise her options within the DB scheme before contributing further to a personal pension. SJP contacted the DB scheme for some information.

Updated notes said that Ms M couldn't contribute to her DB scheme. She was advised in 2019 to contribute £13,000 to an SJP Retirement Account instead. Ms M subsequently opened a Self-Invested Personal Pension (SIPP) with a different provider and contributed £16,000. She contributed further lump sums into the SIPP bringing her contributions in the tax year 2019/2020 to over £52,000.

Ms M complained that she wasn't told about tax relief on pension contributions before and feels she has lost out as a result. SJP accepted that she had not received a service from them between 2014 and 2018 and offered to refund the ongoing advice fees that had been charged during this period (rounded to £1,050) plus £250 compensation in recognition of the trouble and upset this matter caused Ms M.

Ms M remained unhappy and referred her complaint to this service through her representatives. She says she should have been advised in 2014 - and each year after that - to maximise her pension contributions, particularly into her DB scheme. She says she has lost out on significant tax relief and pension benefits as a result. One of our investigators thought the refund of fees and additional payment of £250 was fair. He didn't think SJP needed to compensate Ms M for the lost opportunities of contributing to her pension earlier. He said even if SJP had recommended her to contribute between 2014 and 2018, it's not clear she would have followed that advice. He pointed to the fact that Ms M didn't follow SJP's advice to contribute to their Retirement Account, but invested in a third party SIPP instead.

Ms M, through her representatives, disagreed and so the complaint was passed to me for an ombudsman's 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.

I previously issued a provisional decision in which I upheld Ms M's complaint. I said:

<u>what SJP should have done?</u>

SJP provided a wealth management service and discussed a variety of products with Ms M in 2013/2014. And in 2018, they did discuss Ms M's pensions with her. Based on what I've seen SJP's service was intended to cover a wide range of financial products and planning areas.

In order to make a personal recommendation about financial products to Ms M, SJP needed to know their client and obtain relevant information about her including her financial situation and investment objectives (COBS 9.2.1 (2) R).

When SJP first got in touch with Ms M in 2013 she was in her late fifties, she had a very large amount of cash funds and was looking for tax-efficient savings and to reduce her IHT liabilities. I think SJP needed to understand her pension provisions before they could advise her on where to invest her money. I would have expected a reasonable adviser to explore and discuss Ms M's pensions with her as they offered tax-efficient provisions which were also exempt from IHT in most circumstances. Ms M was a higher rate tax payer and so the tax relief available would have been particularly beneficial to her. Her DB pension should have been looked at as a priority as this could provide highly valuable guaranteed benefits. I have seen no evidence that Ms M was asked about her pensions or that those were discussed until she was contacted by the new adviser in 2018. In the meeting notes in 2018 the adviser recorded: " I explained pension tax relief to her and she felt like she should have been contributing years ago".

Overall, I'm satisfied that as part of their wealth management service SJP ought to have discussed Ms M's pensions with her in 2013/2014 as well as in the following years during their reviews (which didn't take place due to their administrative errors).

Based on Ms M's circumstances and objectives, I can't see any persuasive reason why the adviser shouldn't have advised her to contribute further into her pensions starting with her

DB pension. This is what happened in 2018 and in my view ought to have happened in 2013/2014.

<u>What would Ms M likely have done if she had received pension advice earlier?</u>

The key question here is what Ms M would likely have done if she had been advised to contribute to her pensions in 2013/2014 and had been informed of the benefits of tax relief.

Of course I don't know for certain what Ms M would have done if she had received advice about her pension earlier. And I've considered that someone saying with hindsight they would have acted in a particular way doesn't necessarily mean this is what they would have done at the relevant time. Where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

I first considered what Ms M did when she did eventually receive advice about her pension in 2018/2019. SJP recommended Ms M to contribute to her DB pension (which turned out not to be possible as Ms M was over 60 at this point which was the scheme's normal retirement age) and to open a Retirement Account with SJP.

I recognise that Ms M didn't follow SJP's advice insofar that she chose a different provider for her pension. I can see from emails in 2019 that Ms M wanted to invest into a particular fund which SJP didn't offer which is why I assume she chose somewhere different. However, she did follow SJP's advice to try to contribute to her DB pension and when this wasn't possible contributed more than SJP recommended into another pension. So in my view she did listen to SJP's advice to increase her pension contributions– and that's what is key here.

I do recognise that there's evidence Ms M didn't solely rely on SJP's advice when it came to financial matters. In 2014 she only transferred an ISA through them and put a life policy under trust. I can't see that any of SJP's other suggestions (investment bonds, stock and shares ISA, various IHT mitigation proposals) were taken up by Ms M. An email in January 2014 from the adviser stated that it had been agreed with Ms M to "park" the IHT issue until she had spoken to her accountants. There are also references to a friend of Ms M who invested £260,000 for her. Her friend also recommended investing in gold and property. The meeting note of 9 November 2018 recorded that Ms M would 'think about whether she wants to invest. She wants to go away and speak with her other people'.

In 2019, emails show that Ms M asked about the possibilities to invest funds from her ISA into the managed fund (SJP had recommended the balanced fund) and to invest half of the recommended pension contributions into the managed fund and half into a particular Japanese Equity fund. SJP had recommended to invest £13,000 into the managed fund only. Ms M also told SJP in 2020 that she didn't think the markets would recover after the Covid- 19 pandemic and asked for her money to be put into cash.

I think this shows that Ms M was an independent decision maker and had her own opinions of what she wanted to do. She also was influenced by other parties who gave her recommendations on what to do with her money which she took on board.

However, I think on balance she likely would have followed SJP's advice with regard to her pension if SJP had given her this advice in 2013/2014, just like she did in 2018. At the time it's recorded that Ms M had over £500,000 in cash funds and investing in a pension would have provided tax-efficient savings. So I think significant pension contributions would have been affordable and the tax-relief attractive to her. It provided additional benefits as well mitigated IHT.

Her DB pension provided several options, including contributing regular or lump sums in return for additional guaranteed income in retirement. I think buying a guaranteed additional income from her DB scheme would have been suitable and attractive for Ms M. Her attitude to risk was recorded by SJP to be relatively cautious and whilst she was investing in some more balanced assets she held lots of her funds in cash or cautious products. I think adding to a guaranteed income in retirement which likely couldn't have been achieved by keeping it in cash or low risk investments would have appealed to Ms M.

Ms M did write to her DB scheme (the letter is undated but I presume it was after she made this complaint) to ask what additional income she could have bought over the years and at what cost. She received a reply to show how much additional income she could have received depending on the year she bought it, however the cost of this depended on when exactly and how she would have purchased this.

If SJP had recommended to maximise her income through her DB scheme in 2013/2014, I think she likely would have done so. She would have found out that any contributions like this were only possible until age 60 (which would have been in March 2015 for Ms M), so she needed to act soon. The DB scheme previously confirmed that at this time the maximum annual income she could buy was £6,000 annual income in retirement.

I think as Ms M had significant cash sums available and likely could have made use of unused annual allowance from previous years, I think she would have tried to maximise her contributions to the DB scheme as much as possible.

I think making reasonable assumptions on Ms M's actions in the following years is more difficult. I think SJP ought to have reviewed Ms M's pension provisions each year. However, whilst maximising pension contributions might have been prudent and the best option in hindsight, I don't think it can be assumed that SJP should and would have recommended to maximise her pension contributions each year. I say this because it would have depended on a variety of factors including how much funds Ms M had available, what her objectives were and whether she still wanted to commit a significant sum towards her pension. Particularly as she would, in my view, have already made a significant lump sum payment into her DB pension in 2014 if she had been advised correctly.

Even if SJP had recommended to maximise her pension contributions in the following years, there is too much uncertainty in my view about whether Ms M would have followed that recommendation and how much she would have contributed each year if she had. SJP's view is that because it's uncertain what Ms M would have done overall, no compensations for lost contributions and benefits should be paid at all. Whereas Ms M's representatives work on the assumption Ms M would have maximised her pension contributions each year.

I think the fairest solution lies somewhere in between.

I'm satisfied that if SJP had advised Ms M earlier on her pension, she likely would have made additional contributions, so I think paying no compensation for this isn't fair or reasonable. And equally, for the reasons I've explained I think it's unfair to apply the benefit of hindsight and assume Ms M would have fully maximised her pension contributions each year.

In the circumstances I think it's fair to limit compensation to Ms M's lost opportunity to maximise her DB contributions when she was able to. There's evidence of her circumstances at the time and I'm satisfied a significant contribution to her DB scheme was affordable, matched her attitude to risk and was generally suitable in her circumstances. And

I think Ms M would have recognised the valuable benefits this would provide for her retirement if SJP had advised her accordingly.

I acknowledge that further contributions in following years would likely have been prudent and offered further IHT mitigation and tax efficiencies. However, what should have been recommended in the following years and whether any recommendation would have been followed and to what extent would be far more speculative in my view. So I don't think I can fairly conclude Ms M would have maximised her pension contributions post 2015.

In summary, I think it's likely SJP's failure to advise Ms M on her pension in 2013/2014 left her unable to buy additional retirement income from her DB scheme and so she should be compensated for this. I don't intend to ask SJP to calculate any potential lost benefits or tax relief for the following years as explained above. Instead I think they should pay her increased compensation for the upset Ms M would have experienced when she found out she lost out on possible opportunities to contribute to her pension further. I think an additional £1,000 on top of the £250 already offered by SJP is reasonable in the circumstances. The ongoing advice fees for the time reviews didn't take place should also still be refunded as offered by SJP.

I understand Ms M's representatives also say she was given misleading information on tax relief in 2019 which led her to overpay into her SIPP that needed to be sorted out and caused further stress. I don't know what was exactly discussed in this regard in 2019 and Ms M seems to have opened the SIPP and contributed to it without SJP's help. So there is not enough for me to say Ms M was given wrong information. I won't ask SJP to do anything further in this regard.

Responses to my provisional decision

Both parties provided detailed further submissions through their representatives and subsequently I asked both parties for more clarification on certain issues which they duly provided.

I can assure the parties I have considered everything they provided in full detail. However, in my decision I will focus on what I consider to be the relevant key points.

SJP in summary said:

- They obtained testimony from the SJP adviser Ms M was dealing with in 2013/2014 about his recollections about what happened at the time. He said he took part in 'drop-in' days at Ms M's workplace during which individuals could raise questions about financial matters at no charge. He would have been available for 30-40 minutes for questions or discuss key issues raised by individuals.

- He met Ms M during such a drop-in session on 28 February 2013 and from the summary email on 5 March 2013 it's clear Ms M wanted to focus on tax efficient savings and IHT planning. She would have been given an SJP information pack for her to review and consider whether she wanted to become an SJP client.

- The second meeting with Ms M would have been more structured and the adviser is confident that, as it's typical practice, a fact find (which isn't available anymore) would have captured her circumstances including her pension provisions. From the email correspondence at the time and the actions that were subsequently taken, he considers Ms M's priorities were her ISAs and IHT mitigation. If she had informed him that her pension and retirement planning was a priority, then he would have referred her to a pension specialist in the firm. He says pension matters weren't forgotten about; but this wasn't a priority for Ms M and she didn't require or instructed him to consider this. She had other priorities she wanted him to advise on. He also said there would have been no reason for him not to provide pension advice if Ms M had been receptive to this.

- He said he had no more than three to four meetings with Ms M and the relationship was rather disjointed with many months between recommendations and actions taken. He said later in 2013 and into 2014, Ms M started to become less interested in the adviser's ideas. She was generally not inclined to agree to his suggestions and he considered that this was in large part due to her receiving advice by a longstanding friend of hers ('JH') who SJP understands to be a highly experienced pensions consultant. The adviser said Ms M told him she was discussing all advice with JH. In the adviser's view she didn't proceed with various recommended actions as JH advised her against it.

- SJP says the testimony shows that pensions weren't a priority for Ms M in 2013/2014 and she didn't instruct SJP to advise on this area. She also was reliant and trusted JH and largely dismissed or not pursued SJP's suggestions. It therefore isn't correct to assume Ms M would have contributed to her existing pension provisions if SJP had advised her to do so in 2013/2014.

- It's wrong to conclude Ms M's priorities would have been the same in 2013 and 2018. In 2018, she was 63, closer to retirement and later had been dismissed from her employment. So her focus would have naturally been more on her retirement provisions by then. Nonetheless, even in 2018, Ms M's priorities were not solely focused on her pension, but she had a wide range of financial interests.

- In the meeting notes in 2018 it was recorded Ms M wanted to focus on investment planning. This was despite she had been given recommendations with regards to her pensions at the meeting. SJP says this is consistent with Ms M using SJP for investment advice to the exclusion of other advice including about her pensions-just as she did in 2013/2014.

- Ms M didn't follow SJP's advice about her pension, but established a SIPP with a different provider without their involvement. This is further evidence that Ms M was reluctant to rely on SJP's advice.

- Ms M wasn't naïve nor did she have no experience of pension provisions or the importance of retirement planning. She had a DB pension and a personal pension which was established in 1990. She was likely aware throughout the relevant period of the tax benefits in a pension.

Ms M's representatives made the following points:

- In 2018, SJP's notes recorded that it was in Ms M's best interest to maximise options available in her occupational pension before making any pension contribution to SJP. Ms M gave the adviser authority to make enquiries to the scheme on her behalf and she had assumed they had asked about the possibilities of making additional contributions to it. However, the questions that SJP asked the administrators of the scheme were connected to transferring out of the scheme and no questions about further contributions were raised.

- Ms M thought SJP had asked the relevant questions and was informed she couldn't contribute more to her occupational pension due to her age at the time which was incorrect. The scheme administrators have confirmed she could have contributed until she ceased to be employed in August 2019.

- Ms M should have been advised to maximise her pension contributions. She could have bought additional income from the scheme and would have had available allowance to make further contributions through a personal pension. If she only bought the additional income through her DB scheme, this still only would have left her with a modest retirement income overall.

- Ms M is adamant that if she had been informed of the benefits of paying into a pension, she would have done so when she could between 2013-2019. She could have not only bought an additional income from the DB scheme but also would have been able to make additional contributions either through her employer's Additional Voluntary Contributions (AVC) or through an SJP personal pension.

- Ms M provided information about her liquid funds in 2016 and says her financial position was similar in following years. She had significant cash available to make additional pension contributions. She had no pressing need for the cash and it would have made financial sense to maximise her pension contributions given the tax relief she could benefit from and the fact she was getting closer to retirement age.

- If SJP had advised to maximise her pension contributions over the years, she would have followed this advice.

My findings

Having considered everything again, I still think the outcome I reached in my provisional decision is fair and reasonable in the circumstances in this complaint. I'll explain why.

Advice in 2013/2014

I remain of the view that SJP ought to have discussed Ms M's pensions provisions and the benefits of tax relief with her when they met with her in 2013 for the reasons set out in my provisional decision.

Even if Ms M didn't specifically mention her pensions as a priority, this doesn't mean that the adviser could reasonably exclude them from his discussions or assume she was disinterested. Pensions are an obvious tax efficient savings vehicle with considerable benefits. It would have been a natural step for the adviser to discuss the general advantages of pension contributions in her situation and how this would offer the tax efficiencies she was looking for. It was for SJP to take Ms M's full circumstances into account and advise her on her options.

If SJP had done so and Ms M had then decided she wasn't interested in discussing her pensions and had wanted to focus on other investments, the case might be different as Ms M would have made this decision from an informed position. But there is no evidence this is what happened here.

What would Ms M have done if she had received suitable advice?

The main point of contention is what likely would have happened if SJP had explained the benefits of pension contributions to her in 2013/2014 and had provided ongoing advice in the following years.

From the notes in 2018, I can see that once pension tax relief was explained to her by SJP Ms M immediately mentioned the lost opportunities of pension tax relief and subsequently contributed to her pension. I'm not persuaded by SJP's argument that she likely would have known about the significant benefits of investing through a pension before this just because she was a member of a DB scheme and held a personal pension which was set up in 1990. Most people have some sort of pension and still often rely on advice to make use of the benefits provided.

I've considered SJP's argument that Ms M was nearer to retirement when she met the adviser in 2018 and that she might have been more interested in her pension than five years prior. However, as explained above, whether Ms M saw her pension as a priority or not, I think when discussing tax efficient savings, I can't see how any competent adviser could not discuss the benefits of pension contributions. I also see no good reason why SJP shouldn't have recommended her to contribute to her DB scheme in 2013/2014, just like they did in 2018.

I appreciate that Mrs M didn't simply follow all of SJP's suggestions both in 2013/2014 and in 2018/2019. She very much had her own opinions and sought input from other sources, for example her accountant and from JH. So I don't think that she solely relied on SJP and would automatically have followed everything SJP suggested or recommended.

I note SJP's comments about Ms M running recommendations past JH and relying on his opinion. It isn't disputed by Ms M that she was asking JH as her friend for his opinion on investments recommended by SJP. And I think it's likely she would have trusted his opinions. However, JH wasn't Ms M's financial adviser. Asking for a second opinion on something suggested to her is not the same as doing a wealth review and looking at her circumstances in detail like SJP should have done.

When SJP did recommend a contribution to her DB pension in 2018 and -when this was not deemed possible- into a personal pension, Ms M spoke to JH and then opened a SIPP with higher contributions. I think if pensions had been discussed before, there's no reason to think he would have discouraged her to make pension contributions in some way. So on balance I think it's more likely that Ms M saw no reason to discuss her pension with JH before pension tax relief was mentioned by SJP in 2018.

I can see no persuasive reason why Ms M would have completely disregarded the significant and unique benefits that additional pension contributions offered her if the adviser had advised her about this at the time. The general advantages of pension contributions were the same in 2013/2014 and 2018.

I also find it unreasonable to assume that if she had discussed pension contributions with any third party after SJP advised her, that anyone would have discouraged her from pension contributions as a concept.

On balance I remain satisfied that Ms M would have contributed to a pension earlier if SJP had provided her with suitable advice.

Timing and amount of pension contributions

I think if SJP had pointed her to her DB scheme, Ms M likely would have recognised the attraction and value of additional DB benefits. She had a significant amount of cash, it would have suited her relatively cautious attitude to risk and it would have helped her achieving her objectives of tax efficient savings and inheritance tax planning. With a lump sum payment she would have been able to easily secure a guaranteed additional income in retirement without investment risk.

So on balance I think she would have made use of this unique opportunity and bought additional income in 2013/2014.

I've considered the argument that Ms M would have used all her available allowances to maximise her pension contributions both at this point and every year after that by not only buying additional income but also invest through AVCs and/or a personal pension arrangement. However, whilst in hindsight that might have been a sensible thing to do, I'm not persuaded that more likely than not this would have happened. There is a difference in my mind between seeing the attraction and tangible benefits of making additional pension contributions as part of an investment strategy and using it to its absolute limits.

So whilst I remain satisfied that Ms M likely would have used the opportunity to buy additional income if SJP had discussed her pensions with her in 2013/2014, I find it significantly more difficult to conclude that on balance she would have maximised her allowances at every possible opportunity in the years that followed and invested it in AVCs or a separate personal pension.

Based on the additional information provided by Ms M, I think it's quite possible that Ms M had the necessary funds to make additional pension contributions over the years. And if SJP had provided her with advice between 2014 and 2018 I think pension contributions ought to have played an ongoing part of their advice for the same reasons as explained before.

However, Ms M would have already paid a significant sum (around £120,000) to pay for additional DB income, and so she might not have wanted to invest more straight away.

Ms M told us she left any savings and disposable income with building societies as she did not receive financial advice between 2014 and 2018. However, I do note that a fact find in 2020 does show that she did have some stocks and shares ISAs. Based on notes from 2013/2014 she didn't have these when SJP met with her or took them out through SJP (although they did recommend that stock and shares ISAs were a good idea). So it looks like she did invest some of her funds either by herself or with help from someone else.

SJP told her in 2014 that leaving significant funds in cash means value would be lost due to low interest rates and inflation. So her funds were worth less than the previous year. Nonetheless Ms M left the majority of her funds in cash products. I recognise that if SJP had offered an annual review between 2014 and 2018 and recommended her again to invest she *might* have been willing to invest more and she possibly would have considered more pension contributions. However, as I said before I don't think any recommendation from SJP-however sensible in hindsight- would have meant Ms M would have automatically followed it. And the fact that she did invest some of her funds without SJP indicates in my view she would have been able to invest more if she wanted to. So I think it's more likely she made a conscious decision to keep significant amounts in cash products, rather than in an investment-based product.

So I think there is a possibility that any additional contributions in an AVC or separate personal pension which would have likely come with a recommendation to invest these funds to maximise the benefits, might not have appealed to her even though logically it could have been the best option.

Like I said before I think what exactly would have happened in the years between 2014 and 2018 if a wealth review had been offered by SJP is too uncertain in my view. I'm not persuaded on the evidence I have that Ms M would have more likely than not contributed into AVCs or a personal pension during this time in addition to buying additional income.

Advice in 2018 and 2020

There is some dispute now whether Ms M could have bought additional income in her DB scheme after she turned 60. After my provisional decision, Ms M wrote to the DB scheme administrators and they indicated that additional income could be bought after age 60. I asked both parties of their recollections around this subject as it was noted on the fact find in 2018 that although additional contributions to the DB scheme were recommended, a note was later added to say this wasn't possible.

SJP's adviser says he left it with Ms M to liaise with the DB scheme and it would have been her who told him this wasn't possible. He can't be certain that he checked this information at the time but pointed to the DB pension website which says:

Additional Pension can be bought in multiples of £250 per annum. There's a couple of easy ways you can buy Additional Pension:

- *Have deductions made from your salary*
- *Pay a one-off lump sum.*

The maximum payment period is 20 years and must be completed before your Normal Pension Age (NPA), which is the age at which you're eligible to claim retirement benefits without actuarial reduction.

The DB website also notes:

Your Normal Pension Age (NPA) depends on which scheme your benefits are in in.
Your NPA for your career average benefits is either your State Pension age or age 65 whichever is the later date.

Your NPA for your final salary is 60 or 65 depending on when you entered pensionable service.

If you were in service before 1 January 2007 your final salary NPA is 60 provided you've not:

Had a repayment of contributions;

Transferred the service out of the Scheme; or

Had a break where you were out of service for more than five years ending after 31 December 2007.

Ms M gave SJP got a letter of authority in 2018 and they wrote to the DB scheme. However, none of the questions related to additional contributions. She says the information that she couldn't contribute would have come from SJP.

It's unclear what exactly happened and where the information came from in 2018 that additional contributions weren't possible after age 60 and when this was established. SJP was obviously in contact with the DB scheme, so their testimony now that it was entirely left to Ms M to liaise with the DB scheme can't be quite right.

Equally, however, Ms M could have separately spoken to the DB scheme at the time or looked at their website and was told or noticed retirement age restrictions which might not have been questioned further at the time. Ms M did contact the DB scheme in 2020 for further information and actively sought clarifications with them after my PD. So I think it's plausible that even though SJP would have had a letter from authority from her, she might have taken initiative and done her own enquiries in 2018/2019. I also note that in March 2020, Ms M wrote to SJP and said about buying additional years in the DB scheme:

'This option is not available (I believe) to people over the age of 60 (do correct me if I'm wrong).'

I think if SJP had told her a year earlier that certain DB options weren't possible after age 60, she likely would have reminded them of what they told her rather than stating what she believed was correct. So I think there is a distinct possibility that the information available at the time from the DB scheme was that additional income couldn't be bought after age 60.

In any event, the information Ms M now got from the DB administrators is conflicting with the information available on the website.

From the service records she provided, I can see Ms M was in service before 2007 and had no significant breaks, so I'm assuming her retirement age was 60 and according to the information on the website Ms M couldn't have bought additional income after that. I think it's possible that the hypothetical information Ms M received this year from the administrators possibly didn't take into account her individual normal retirement age.

Even if I'm wrong about this and additional income could have been purchased after age 60, I already found that if everything had happened as it should have Ms M would have likely purchased additional income in 2014. At the most she could have purchased further additional annual income of a few hundred pounds in 2018/2019. However, it remains uncertain whether she would have even explored this option if she had bought the maximum available additional income a few years earlier.

I want to note at this point that her increased DB pension (£11,381 plus £6,000) together with her state pension of around £9,000 would have given her guaranteed and increasing income of £26,000 per year in retirement. And she had an additional pension worth around £68,000. So this is far from what her representatives describe as a small pension.

Overall, I think it's likely she couldn't buy more additional income in 2018 (as she was over 60) and even if she could I'm not persuaded she would have more likely than not bought a small amount of additional income.

In early 2019, Ms M opened a SIPP (without SJP's involvement) and made lump sum contributions. She told SJP in March 2020 that this is what she had done after a friend had told her about SIPPs and available tax relief. It's clear that by 2020 she was keen to maximise her pension contributions, particularly as she had been made redundant by this point and saw her last opportunity for 40% tax relief. And she knew about being able to carry over allowances from previous years. Ms M took her own action with regards to her pension in early 2019 and only afterwards got in touch with SJP to ask more detailed questions about how much she could contribute in her specific circumstances. I don't think it's reasonable to hold SJP responsible for how Ms M contributed to her pension after 2018.

In summary, I remain satisfied that if SJP had provided suitable advice in 2013/2014 and had advised her on the benefits of pension contributions, she would have contributed to her pension earlier and more likely than not would have chosen to buy additional income in 2014 for the reasons explained. I still think making assumptions on what would have happened in the following years is more speculative.

There is no doubt maximising pension contributions each year would have been prudent in Ms M's situation and she likely had the necessary funds to do this. However, whether any discussions in later years would have led to a recommendation to maximise her pension contributions and whether Ms M would have followed such advice is too uncertain. And so I don't think it's reasonable to hold SJP responsible for additional losses than what I already described.

Overall, I think the compensation I set out in my provisional decision and which I'll repeat again below remains fair and reasonable in the circumstances of this complaint.

Putting things right

My aim is to put Ms M as much as possible in the position she would be in now if she had been able to secure an additional income through her DB scheme before she turned 60. SJP should:

A) Ask Ms M's DB scheme to calculate how much it would have cost her to buy £6,000 in additional annual income in 2014. The DB scheme previously explained to Ms M that in order to calculate costs, they would need more detail about when exactly she would have purchased benefits (as cost would depend on her age), whether payment would have been made through a single lump sum and whether benefits would have been set up for her benefit only or whether it should have included dependents' benefits.

   For the calculation I think it should be assumed that:

- Ms M would have paid for additional income with a single lump sum as she had cash funds available.
- This payment would have been made on her 59th birthday (which falls into the period she was given advice and into the tax year 2013/2014)
- Income would be paid without dependents' benefits. I've assumed this as I have no information that Ms M was married at the time (or if she was that there was a strong need for spouse's benefits) and it seems she had made other significant financial provisions for her son.
- Based on the information provided by Ms M it looks like she had enough available allowance to buy the full amount in March 2014.

B) The contributions would have been eligible for 40% tax relief. So SJP should work out how much the contributions would have cost Ms M after tax relief had been applied.

C) Establish what value Ms M likely achieved by investing the sum under B) into different investments instead. It's difficult to establish what exact investment returns she achieved by not investing into her pension. So I think it's fair to apply a benchmark to the sum in B) from her 59th birthday to the date of my final decision. Ms M was a fairly cautious investor with much of her funds in cash or cash bonds. So I think a reasonable benchmark is the following:

   For half the investment: FTSE UK Private Investors Income Total Return Index;
   for the other half: average rate from fixed rate bonds.

   The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to her capital. The FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's a fair measure for someone who was prepared to take some risk to get a higher return.

D) The additional income from the DB scheme likely would have been revalued pre-and post retirement. SJP should ask the DB scheme to calculate how much additional annual income Ms M would be entitled to at the date of my final decision, assuming she'd taken these additional benefits at the same age as she took the rest of the DB pension.

E) SJP should get an annuity quote for Ms M to provide her with the income calculated under D) which should mirror as much as possible the basis on which the income would have been provided through the DB scheme, including it being a single life and escalating annuity. This is how much it would cost Ms M now to replicate her lost benefits going forward.

F) Pay Ms M for past losses. This is the annuity payments she hasn't received since she's taken her DB benefits (if she has done so). They should be calculated as follows:

   Total of additional income payments that Ms M would have received from her DB scheme when she started taking DB benefits to the date of this final decision. Ms M would have had to pay income tax on these payments, which can be deducted by SJP. I assume this to be 20%. It is not a payment to be made to HMRC but an adjustment to ensure that Ms M is not overcompensated.

G) Pay 8% simple interest per year on the net payments (after tax) calculated in F) from the date they would have been paid to the date of settlement.

   Income tax may be payable on any interest paid. If SJP consider that they are required by HM Revenue & Customs to deduct income tax from that interest, they should tell Ms M how much they've taken off. SJP should also give Ms M a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

H) Ms M's future losses are calculated as follows: E-C. If the result is positive, SJP should pay this sum to Ms M. If the result is negative, Ms M can buy more future income with her existing funds than the additional DB income would provide

I) Any potential gains under H) can be offset with losses calculated under F).

J) Refund Ms M the ongoing advice fees (if SJP hasn't already)

K) Pay Ms M a total of £1,250 for the upset and sense of lost opportunity caused when she learned she hadn't been advised to contribute to her pension earlier. If SJP has already paid their offer of £250, they only need to pay £1,000.

L) SJP should provide redress calculations to Ms M in a simple and clear format

SJP must pay the compensation within 90 days of the date on which we tell them Ms M accepts my final decision. If they pay later than this they must also pay interest on the compensation from the deadline date for settlement to the date of payment at 8% a year simple.

My final decision

<u>Determination and money award:</u> I uphold this complaint and require St. James's Place Wealth Management Plc to pay Ms M compensation as set out above up to a maximum of £160,000.

Where the compensation amount does not exceed £160,000, I would additionally require St. James's Place Wealth Management Plc to pay Ms M any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000, I would only require St. James's Place Wealth Management Plc to pay Ms M any interest as set out above on the sum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that St. James's Place Wealth Management Plc pays Ms M the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to her.

If Ms M accepts this decision, the money award becomes binding on St. James's Place Wealth Management Plc. My recommendation would not be binding. Further, it's unlikely that Ms M can accept my decision and go to court to ask for the balance. Ms M may want to consider getting independent legal advice before deciding whether to accept any final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 11 October 2023.

Nina Walter
Ombudsman