DRN-4473691

The complaint

Mr M complains about the advice he received from St. James's Place Wealth Management Plc (SJP) regarding the transfer of his personal pension plan (PPP). He says its advice not to transfer has affected his retirement plans and means he is now unable to pay off his mortgage.

What happened

Mr M holds a drawdown plan with SJP as well as two other PPPs through other providers. One of those was a PPP which contained a "guarantee" arising from compensation calculated under the industry wide pensions review. This was because Mr M had been incorrectly advised previously to opt out of an Occupational Pension Scheme (OPS). This meant that when Mr M wanted to draw benefits from that plan the provider would calculate the amount required to ensure he received the same benefits that he would have done if he'd been a member of that employer's pension scheme.

Mr M had regular review meetings with SJP which centred mainly on the frequency and level of withdrawals he wanted to take from his drawdown plan. But in 2021, having received a statement from the other provider setting out the lump sum he could take from the pension review guarantee plan, he asked SJP about the viability of transferring that sum to his drawdown plan. Mr M says SJP told him that as he didn't require the funds at that time, he should leave the benefits where they were as their estimated value should only increase.

The following year Mr M received another statement which showed the value of the lump sum available had increased to £527,714 - a significant increase. So he asked again if SJP could transfer the funds. SJP's adviser said she needed to understand the value of any guarantee he might "give up" if he transferred, she also sought advice on whether SJP could accept such a transfer. She subsequently told Mr M that her recommendation was that if he didn't need the funds a transfer would most likely be unsuitable unless he could provide a breakdown of why he needed to access them as a compelling reason to transfer.

A subsequent review meeting with SJP – planned for December 2022 - was deferred until Mr M received another illustration from the other provider. Each quotation was only valid for three months. Unfortunately when Mr M received the new quote in March 2023 the lump sum figure had fallen by around £190,000. He says he wanted to use the tax free cash (TFC) from the plan to pay off his mortgage – which he couldn't now do.

Mr M expressed his concern and disappointment about the loss to his adviser and she submitted a complaint to SJP on his behalf about the advice he'd been given.
Mr M says SJP didn't answer his complaint for a period of around four months, so in the meantime he brought it to us to investigate. When it did eventually respond SJP said it didn't uphold the complaint making the following points:

- Its adviser had sought technical advice which said that if she was unable to confirm how the "guarantee" would work upon transferring or was unable to establish a reason for transferring then she couldn't recommend the transfer.
- This recommendation was reiterated again in 2022.

- The adviser had no recollection of being told that Mr M wanted the TFC from the other pension to pay off his mortgage. She had previously thought this would be paid off using an inheritance that was due. Nor was this documented within the financial review that was completed in 2022 – which didn't record a mortgage still being held at that time. (Assumed to be paid off with the inheritance proceeds).
- But it did accept that its technical team may have provided incorrect information that the "guarantee" within the other plan was always likely to increase. It offered £650 for this error and for the delay in responding to the complaint.

Mr M didn't agree. He said he didn't raise the possibility of transferring his pension but expressly *asked* the adviser to do it– which was set out in three separate emails. He said the only reason he didn't pursue the transfer was because the adviser incorrectly told him the fund value would increase and he should defer any action until he actually needed the funds. He also refuted the suggestion that he was going to pay off his mortgage using an inheritance. He said it wasn't possible to do that and in any case the adviser invested his inheritance money into ISAs for him.

One of our investigators looked into matter. She didn't think the complaint should be upheld as she thought the advice not to transfer was suitable. She also thought SJP's offer of £650 for the distress and inconvenience caused by providing incorrect information about the guarantee applied to the plan, was fair and reasonable.

Mr M didn't agree making the following points in response:

- SJP told him the offer of compensation he would get within the pension review PPP from the provider wouldn't fall, which was incorrect advice. The compensation offer has been affected by the rise in interest rates – which has also increased his mortgage costs.
- He is now aware that his plan wasn't a final salary pension but a separate plan holding the compensation amount. He could have taken his TFC from that plan and then taken the residual amount as a lump sum or to purchase an annuity. He made it clear to SJP many times that he intended to take the lump sum.
- The provider has confirmed that he didn't need to take advice to withdraw the lump sum and use a drawdown plan for the remining funds. If SJP had confirmed this, he could have dealt with the provider directly.
- SJP gave advice without fully understanding his plan or providing a suitability report. The adviser's explanation that he intended to pay off his mortgage using an inheritance is incorrect as he explained why that wasn't possible in great depth. In addition the adviser invested most of the money he did inherit into ISAs – so SJP was fully aware of his position.
- SJP constantly told him to leave the pension funds invested if he didn't need the income. But by 2020 he did need the income and used his savings to provide it instead. He didn't understand why he wasn't advised to use the pension plan to draw an income up to the value of his personal income tax allowance.

- Following his complaint to SJP it has taken five months for it to respond which meant he missed the opportunity to take the provider's compensation package in March 2023. He has requested another benefit illustration from the provider, but these generally take three months at least to produce. He is concerned the value will have fallen again.

In asking for his complaint to be referred to an ombudsman Mr M told us that his plan has fallen by a further £26,873 since the March 2023 illustration. He said this represented a total loss of approximately £217,000 since he asked to transfer his plan in March 2022. He said

SJP's delays in responding to his complaint meant he missed another opportunity to withdraw his funds again when another illustration expired, and it took four months to obtain another one.

So the complaint has been passed to me to review.

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.

And having done so I've reached the same conclusion as the investigator. I know this outcome will disappoint Mr M as I've seen the strength of his feelings about this matter and I have some sympathy for the position he now finds himself in. But I don't think that was SJP's fault and I think its offer to put things right is fair and reasonable. So I'll set out my reasons below. I've been provided with a lot of information regarding communication between Mr M and SJP since 2017 primarily through review meetings and emails and I've used this information as part of reaching my overall decision.

Was the advice not to transfer to SJP suitable?

Mr M asked SJP on two occasions to transfer the benefits of the pension review guarantee PPP into his SJP drawdown plan. This request was based on the statements he received from the other provider outlining the lump sum he would receive from that "guarantee" as well as a fund value of the benefits that were contained outside of the guarantee.

So I think Mr M, pleased at the significant increase he noted in 2022 in the amount available to him, thought it would probably be in his best interest to take that sum – using the TFC and reinvesting the balance into his drawdown plan. I don't think that was an unreasonable course of action, but he asked if SJP could *transfer* the fund to its plan which meant that SJP couldn't just carry out his request without a determination of whether that transfer was suitable for him and financially in his best interest.

I think it's important to highlight this distinction because Mr M simply wanted to maximise his income and TFC capabilities, whereas SJP didn't have the same concern about whether his available fund had become more generous, but whether a transfer of *any* amount was suitable for him based on a comparison of what it could provide against the other offering.

In order to determine that outcome SJP needed to conduct some form of transfer analysis to show Mr M either how he might benefit from a transfer or what benefits he would be giving up and the financial loss he might incur. Just because Mr M wanted to transfer didn't necessarily mean that SJP had to comply with that request.

From the evidence I've been presented with I think SJP had two obstacles to overcome to undertake an analysis. The first was to be able to calculate the effect of the 'pension review guarantee'.
As the guarantee would ensure Mr M received the equivalent income to what he gave up from not being a member of his OPS, SJP needed to understand how the calculation worked so that it could incorporate that within its analysis. From what I've seen the information it eventually received from the provider explained that the calculation followed the regulator's prescribed methodology as set out by the pensions review (FG17-9). That calculation is somewhat complex, and I'm not persuaded SJP would have been able to incorporate it within a transfer analysis report. So I'm not satisfied it would have been able to accurately demonstrate what benefits Mr M would have given up.

But in any case, SJP wasn't satisfied it was provided with the information it needed so it wasn't willing to undergo the analysis anyway – which I think was a reasonable course of action, as I think it was more likely than not that SJP would have demonstrated a transfer wasn't in Mr M's best financial interests. By the time SJP's charges and fees had been applied to the transfer value I don't think it's reasonable to think SJP could have demonstrated to Mr M that he would be financially better off.

The second issue SJP had was that it would have needed a compelling reason to transfer to satisfy the regulator's default position that a transfer of this type wouldn't normally be in a consumer's best interest. I know that this wasn't a defined benefit transfer, but the terms of Mr M's pension review guarantee meant that any transfer analysis should be considered along similar lines. The adviser initially set this out in her email of May 2021 to Mrs M when she said, "*however if he requires the money, I will need to provide SJP with a breakdown of what he would spend it on for them to approve a transfer. Especially as (the other provider) also offer a drawdown facility without the need to transfer and their charges are lower than SJP.*"

Mrs M gave the reason as, "*that I just assumed he could draw 25% tax free from this and invest the rest in his drawdown pot? The reason for drawing the tax free lump sum is because from next April he'll be a taxpayer and therefore we wanted to minimise the amount he took from his drawdown facility as income. Transferring the balance to SJP was to simplify it.*"

I don't think that was an unreasonable explanation, although I don't think it could be considered as a compelling argument for transferring, especially as the suggestion that Mr M would become a taxpayer in the new financial year wouldn't affect his ability to draw TFC – and there was clearly no requirement for any further income because the thought was to invest the residual fund into the SJP plan. So although the adviser said that if Mr M wanted to transfer his benefits to SJP it would consider doing so if there was a compelling reason to transfer – I don't believe the reason cited was compelling enough.

However, Mr M has been consistent in telling both ourselves and SJP that he wanted to transfer the benefits and use the TFC to repay his mortgage. He has disputed that he told SJP he would be using an inheritance to pay off the loan and said the SJP adviser was aware that wasn't the case as she invested most of it into ISAs for him. He said that SJP hadn't recorded his financial position correctly in some of its documents including in its fact find of 2022, when it incorrectly said he no longer had a mortgage. So I've considered what Mr M has said but I haven't seen sufficient evidence to support the claim that he made SJP aware of this reason for transferring.

Looking at the notes from the review meetings Mr M had with SJP, I can see that various references were made to both his mortgage and his possible inheritance. In March 2017 it was suggested that Mr M was looking to repay the mortgage with his fathers' inheritance or possibly repaying the mortgage using overpayments and ISAs. In December 2018 it was noted that the outstanding mortgage was £100,000 and Mr M was considering investing his father's inheritance and looking to remortgage.
In March 2020 the outstanding mortgage was unchanged, but the inheritance was noted to be around £75,000 which Mr M was open to investing. In March 2021 it was noted the mortgage was an interest only loan of £100,000. The review notes also referred to "downsizing".

So I think the adviser did show awareness of Mr M's situation and made reference to his mortgage, inheritance, and possible investments over the years. But while Mr M disputes the accuracy of some of that content I've seen nothing to support the claim of using the TFC as a vehicle to help repay the mortgage. As I've set out above when Mr M was given the opportunity to put forward reasons for transferring his plan by the adviser in January 2021 there was no suggestion that using the TFC to repay a mortgage was part of any plan. So I don't think there's anything to support that idea and, as I haven't seen any other compelling reasons that were put forward for SJP to consider the transfer, I think SJP's advice not to transfer in 2021 was probably suitable and in Mr M's best interest.

In 2022, Mr M met with SJP's adviser to ensure his existing plans remained suitable and to review the level of income being drawn from his drawdown plan. That review noted that Mr M held £83,000 from an inheritance from his father. The recommendation that followed the review was to "*maintain the same level of income being drawn from your Retirement Account because you will start taking an income from your company pension scheme this April when you reach the scheme retirement age. You would like to take the opportunity to amalgamate your existing plans to reduce the administrative burden and release some tax free cash to fund the purchase of a new car."*

Following the review meeting Mr M received an updated quotation from the other provider about his pension review guarantee plan. He told the adviser that its value had risen considerably and wanted to know the charges involved in switching the plan to SJP and whether he could take the TFC later if he didn't take it "up front". However, although the adviser made it clear that, "*if I cannot quantify the loss (to Mr M) and conduct the analysis, then I will not recommend a transfer",* she said she would ask the other provider how the guarantee was calculated to see how much Mr M might lose by transferring.

But Mr M's circumstances hadn't really changed from the year before apart from not requiring any more income before drawing his company pension in two months' time. So in the absence of any new compelling reasons to transfer I think SJP - unless it could conduct analysis showing that a transfer would be in Mr M's best interest, would be more likely than not to decline the transfer on the grounds that it still wasn't suitable. As I've already said the complexity of the required calculation meant that SJP was unwilling to conduct a pension transfer analysis report and the adviser seemingly suggested "*it may be best to wait until he needs to access then benefits.*"

So looking at the situation both in 2021 and 2022 I don't think it was unreasonable for SJP, based on the information it gathered and recorded, to recommend the pension review guarantee plan wasn't transferred to the drawdown plan Mr M held with it.

But Mr M says that the only reason he didn't take his benefits from the other provider or transfer them to SJP was that the adviser told him the value "*would only increase*" so he didn't think there was any problem in deferring the transfer. He said he was "*shocked*" by subsequent falls in the value of the plan.

So I've gone on to consider both the recommendation not to transfer the benefits and what Mr M might have done in light of a clearer and fuller explanation of what could happen to the fund value of the other "guarantee" plan.

The recommendation not to take the pension review guarantee benefits

The situation here is that, at any given time, the value of the other PPP is somewhat moot as it simply reflects how much would be required in order to replace the benefits Mr M gave up from not being in his employer's pension scheme. In other words how much would be needed to provide an annuity which matched the pension income he would have received if he had joined the scheme. This calculation is affected by a number of factors – of which interest rates are one. But the income that Mr M would receive when he decided to take his benefits from the provider would still be the same regardless.

In 2022 the amount required by the provider to provide the benefits was significantly higher than previous illustrations had noted, so it provided Mr M with an unlikely opportunity to crystallise this gain either by transferring the value to another provider or drawing the benefits using one of a number of options directly from the provider. As I've already explained the first option wasn't going to be available from SJP as the transfer was unlikely to be suitable without a compelling reason – which the adviser wasn't provided with at that time. But the second option was available to Mr M directly – as was set out in the illustrations he received from the other provider.

The illustration set out the fund value and the options available to Mr M. It stated that "*it's possible to take all of your pension pot as a cash lump sum, but there can be serious tax implications if you do so…. if you don't want to take all of your pension pot in one go you can leave your money invested and make withdrawals when you need to."* The illustration then directed Mr M to a number of telephone numbers and a website where he could obtain further information about his quotation and take the necessary steps to draw his benefits under one of the available options. Mr M would have been advised to *consider* taking financial advice by the provider but there were no restrictions to him taking his benefits directly, nor would SJP have been able to prevent him doing so either.

So Mr M would have been at liberty to draw the "enhanced" benefits when he received his illustration if he wasn't persuaded that SJP were acting in his best interest and if he simply wanted to take advantage of the significantly higher transfer value available at that time.
I have also considered whether the SJP adviser ought to have told Mr M to draw his benefits directly in any case, but I think that would have been acting outside of her scope of advice. I think her general view of not drawing benefits unless there was a good reason is probably the right approach here. Had she told Mr M to draw the benefits and the fund value had risen even further then Mr M would have had grounds for complaint that he'd been given unsuitable advice which had caused him to suffer a financial disadvantage.

The fundamental problem that faced Mr M here was that he thought it made good sense for him to take advantage of the higher transfer value on offer. It would after all have provided greater TFC if nothing else. But SJP could only recommend a transfer of that value into its plan if it was in Mr M's best interest. And as I've stated SJP was unable to complete an analysis to make a suitable recommendation and in any case, based on charges alone, it would have been difficult for SJP to demonstrate Mr M would be better off by transferring. As the adviser confirmed in an email to Mr M, the other provider also offered a drawdown plan, a wide range of investments, and lower charges. So if Mr M wanted to transfer simply to access the TFC and then leave the residual funds invested, it was more likely than not that his existing provider would have provided a better outcome.

So that left Mr M with the option of dealing with the original provider directly – which I've touched upon above. But I have made one final consideration about what Mr M might have done if he'd not been given misleading information about the likelihood of the existing "guarantee plan" continuing to increase.

The question of the incorrect technical information

I've thought carefully about this matter, and I think I should clarify what SJP said with regards to the "guarantee". I'm unable to determine what the adviser may have said to Mr M during telephone conversations, and I've no reason to dispute his consistent assertion that he didn't draw the other PPP benefits because he was told they would likely only increase. But I have seen two emails exchanges during which SJP's adviser – having sought advice from her technical department - suggested that might be the case. On 21 March 2022 she wrote "*this calculation will need to be done each time an illustration of benefits is requested,* *and therefore the amount of redress will increase."* And on 17 May 2021, "*I recommend he should defer drawing on the pension fund, and it could continue to grow."*

So, while the adviser didn't make any guarantees about the value of the other PPP, I think she raised expectations that it would be unlikely to fall. But in any case she didn't make it clear that it was the guarantee that Mr M would receive the equivalent benefits to the OPS that would remain – not that the fund value couldn't fall. As was made clear in a later email exchange between the other provider and SJP, the fund value could change because of many factors – but it would only ever reflect what was needed to provide the equivalent OPS benefits at Mr M's retirement age.

So I've considered what Mr M would have done if SJP had been clearer and more accurate in what it said. First there's no evidence to suggest that SJP wouldn't have reached the same conclusion that the transfer wasn't suitable for Mr M. But if SJP had been clearer it would have needed to explain that, while Mr M would always receive an income equivalent to what he should have got from the OPS – which would be likely to rise over time, the fund that would represent that income could rise and fall depending on external factors – one of which was interest rates. This was the reality of the situation, and it wouldn't have been possible for SJP or Mr M to know whether the fund value would be higher or lower from year to year.

So I've thought carefully about what Mr M would have done at that point and I'm not persuaded he would have acted differently. I say that because, if presented with a recommendation not to transfer, from an adviser that he clearly valued and trusted at that time, I think he would have acted in the same way. It was only the receipt of a new quote which set out a significantly lower transfer value that alerted Mr M to a problem. Unfortunately by that time it would have been too late to have revisited the original higher valuation and drawn the benefits.

I think, quite understandably, Mr M was shocked by what had happened and realised he had lost an opportunity to secure the higher value – but I don't think that means he would have acted any differently if SJP hadn't given misleading information. I don't dispute that Mr M intended to take the benefits as a lump sum as he set out in his email of 13 February 2022, which says "*clearly the plan is to take the lump sum as for annuity purposes it would take 53 years to recoup this amount*". But I'm not persuaded he would have gone to the other provider at that point and drawn them directly if SJP hadn't given misleading information.

Of course I've taken into account that Mr M says he was "assured" the value of the plan wouldn't fall so if he'd know it was possible for it to fall, he would almost certainly have taken the offer that was available to him at that time. And I appreciate that he had consistently followed advice that SJP had given him. But I think SJP made it clear both in 2021 and 2022 that it couldn't recommend a transfer, and nothing that Mr M did subsequently supports the claim that he would have gone directly to the other provider and taken his benefits if SJP had made it clear that the fund value could fall in the future.

<u>*The delay in answering the complaint and SJP's offer*</u>

Mr M says that SJP has been "*unprofessional*" in answering his complaint. He said it took SJP five months to respond which meant he missed another opportunity to take the benefits from his other plan because each illustration is only valid for three months. He is concerned that each new illustration he requests will show another fall in the fund value.

I can understand why Mr M is frustrated by the delay in answering his complaint. SJP itself has acknowledged that it should have responded sooner and has included an element of compensation within its overall offer to reflect the delay. But Mr M has still been able to refer his complaint to us within the timescales set out and this hasn't affected our ability to consider his complaint. And Mr M hasn't been restricted from accepting any of the quotation offers he received from the PPP provider during this time.

We would have expected Mr M to have mitigated his position in this situation and I've seen no evidence to support the idea that Mr M couldn't have taken his benefits at any stage. As I've said previously SJP set out its position that a transfer wasn't in Mr M's best interest – which I think was a suitable recommendation. So if Mr M wanted to accept a higher fund value he could have considered taking his benefits directly in any case.

SJP have offered the sum of £500 for any distress and inconvenience caused by the incorrect technical information it provided about the "guarantee" within the other PPP. It also offered a further £150 for the delays in responding to the complaint. I've thought about this offer carefully and I've come to the conclusion that it's within the range of what I'd expect to see for an error such as this. And while complaint handling isn't a regulated activity and therefore not something we would usually award compensation for, I think the sum of £150 is fair and reasonable in respect of a delay in responding to a complaint for which SJP hasn't provided a robust explanation.

Putting things right

Overall I think the sum of £650 is a fair and reasonable resolution for both the error SJP made and the delay in responding to Mr M's complaint.

My final decision

St. James's Place Wealth Management Plc has already made an offer to pay £650 to settle the complaint and I think this offer is fair in all the circumstances.

So my decision is that St. James's Place Wealth Management Plc should pay £650.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 21 December 2023.

Keith Lawrence
Ombudsman