

The complaint

Mr B has complained that because of the actions of St. James's Place Wealth Management Plc (SJP) he was unable to transfer from his defined benefit (DB) pension scheme in 2020 and has suffered a financial loss as a result of the decrease in the cash equivalent transfer value (CETV) now available.

What happened

The history leading up to this complaint is well known to the parties and therefore I have only summarised events below.

In 2020, Mr B wished to transfer his DB pension scheme benefits, administered by a pension provider I will refer to as D, into a self-invested personal pension (SIPP) with another provider. He received a transfer quote from D dated 20 June 2020. Amongst other things this document said:

- *Normal retirement date (NRD) 31 March 2028*
- *If your DB transfer value is over £30,000 and you want to transfer it to a scheme that provides 'flexible benefits' (for example a defined contribution scheme or a cash balance scheme), we can only pay your transfer value once the Trustee has verified that you have received appropriate independent advice from a financial adviser who is authorised by the Financial Conduct Authority to advise on transfers.*
- *The DB transfer value represents 'safeguarded benefits' as defined in the Pension Schemes Act (2015).*
- *In some circumstances, by law, we must check you have received appropriate independent financial advice before we can transfer your DB pension.*
- *Transfer value available from the Scheme: £216,450.70*
- *Guaranteed for a period of 3 months from: 30 June 2020*

The transfer quote also included the following information pertaining to early retirement:

Benefits at retirement

Early retirement is permitted from age 55 with the consent of the Trustee. The pension would be reduced to take account of early payment, on the advice of the Scheme Actuary. Retirement before age 55 is only permitted if you are in ill-health.

And

- **Early retirement**
Subject to Trustee approval, deferred pensions may be paid at any age from 55 (current minimum retirement age) or earlier if approved by the Trustee on Ill Health grounds, but the pension will be reduced because it is paid early. Ill health retirement

for current members, who remain active members of the Money Purchase section of the Scheme, is calculated on a different basis and more information about protected Defined Benefit entitlement for current staff can be found on the **Scheme website**.

- **Early/Late retirement factors**

As a guide, at the present time deferred pensions will reduce by c.4.5% for each year before normal retirement age for members who retire early and for members who defer retirement beyond normal retirement date the deferred pension will increase by c.7% for each year after normal retirement age. These factors are not guaranteed, are based on market conditions, reviewed regularly and subject to change which is not notified to members.

Mr B was 53 at this time and it's unclear from the evidence available if the transfer value quoted took account of any reductions for early retirement. Regardless, because the value of the safeguarded benefits provided by the DB pension would exceed £30,000 even if no reduction was in place, Mr B had to obtain appropriate independent financial advice before D would allow the transfer.

Mr B sought to obtain this from SJP. The person he spoke with at SJP, Mr F, told him on 6 February 2020 that "*I am not an IFA but can deal with pension transfers*". So Mr B engaged Mr F and he agreed to provide advice on his DB transfer for a fee of £400.

Mr B emailed Mr F on 2 July 2020, providing him with the transfer paperwork from D and said:

As discussed, I'm looking to transfer to [SIPP Provider] (money to be held in cash) at age 55 (2 years). Tax free cash taken and £135000 withdraw to age 67.

At age 67 take state pension and Teacher's pension.

Current Assets: House value £325,000, family savings approximately £100,000.

Mr F subsequently issued his assessment of the transfer in a letter dated 13 August 2020. He recommended that Mr B not transfer his DB pension. This letter also said explained:

*This means that for purposes of any declaration the [DB] scheme trustees ask you to sign you can state that you have taken advice on transferring, but you can confirm that the advice was **Not** to transfer and neither I, nor St. James's Place will complete any warranty or discharge forms for the scheme.*

Mr B subsequently contacted Mr F to obtain the necessary declaration that appropriate independent financial advice was received. Neither SJP nor Mr F provided this. It later transpired that Mr F was not suitably qualified to provide DB pension transfer advice. Mr B's DB pension benefits were not transferred at this time.

In March 2023, Mr B complained to SJP about what happened in 2020 and the advice not to transfer. He was unhappy that Mr F did not complete the appropriate independent financial advice confirmation form and said that this prevented the transfer from proceeding. He also said that at the time Mr F told him that if he waited the transfer value would increase. So he waited until he turned 55 but the transfer value quoted to him on 23 February 2023 had decreased to £146,664.74. He wanted SJP to compensate him this difference along with the distress and inconvenience he had gone through as a result.

SJP didn't uphold the complaint. It felt the advice provided was suitable and explained that Mr F provided only a high-level assessment and if there had been merit in the transfer at that

stage, Mr B would have been referred to a Pension Transfer Specialist who would have conducted further analysis. And it pointed out that the regulator's position regarding advice on DB transfers is that it should be assumed the transfer will not be suitable and so should only be recommended if it can clearly demonstrate that the transfer is in the client's best interests. It didn't think this was the case here.

But SJP further explained that the Scheme said it required confirmation of financial advice even if this advice was to not recommend the transfer. And that Mr F provided this confirmation and details.

It also said that the Mr F did not recollect telling Mr B to wait to take benefits as the CETV would increase. And it noted the information provided to Mr B, including a booklet titled "Understanding defined benefit transfers" explained that CETVs are not guaranteed. However, in acknowledgment of the time taken to respond to the complaint, SJP offered Mr B £250.

Mr B didn't accept this offer and brought his complaint to this Service for an independent assessment. One of our investigators looked into things and concluded that Mr F was not suitability qualified to provide appropriate independent advice as required before the transfer could proceed. He thought Mr F ought to have known this from the outset and should not have agreed to advise Mr B. The investigator concluded that the transfer didn't proceed as a result of the Mr F not being suitably qualified, but he didn't agree that Mr B suffered a financial loss as a result. Mr B didn't pay for the advice he received. And the investigator pointed out that Mr B didn't take any further action regarding the transfer of his plan for over two-and-a-half years after he learned that Mr F wasn't qualified to provide the advice needed. The investigator explained that he thought it more likely than not that Mr F would not have advised Mr B to wait to transfer because the CETV would increase. This was not stated in the recommendation letter, and he thought it unlikely any financial adviser would guarantee that an investment would only go up.

But the investigator did think Mr B had suffered some inconvenience and a loss of expectation regarding what transpired in 2020 and thought the £250 offered by SJP was fair in the circumstances.

Mr B didn't agree and asked for an ombudsman's decision. He has since told us that his losses have further increased as he's now had to take early retirement from a different pension which resulted in a significant decrease in his entitlement from that scheme.

As an agreement couldn't be reached, the complaint has been referred to me for 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.

When considering what is fair and reasonable, I have taken into account relevant law and regulations; regulator's rules, guidance and codes of practice; and what I consider to have been good industry practice at the time.

Where the evidence is incomplete, inconclusive, or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

It is my role to fairly and reasonably decide if the business has done anything wrong in

respect of the individual circumstances of the complaint made and – if I find that the business has done something wrong – award compensation for any material loss or distress and inconvenience suffered by the complainant as a result of this.

The parties to this complaint have provided detailed submissions to support their position and I am grateful to them for doing so. I have considered these submissions in their entirety. However, I trust that they will not take the fact that my decision focuses on what I consider to be the central issues as a discourtesy. The purpose of this decision is not to address every point raised in detail, but to set out my findings and reasons for reaching them.

Mr B is clearly very disappointed with how SJP dealt with things in 2020 and is unhappy that the transfer value available from his DB pension is now substantially less. I've considered all Mr B has said very carefully and in particular why he disagrees with the view reached by the investigator. But having done so, my views are much the same as the investigator's. I agree with the outcome the investigator reached and with the reasons he gave. I don't have much to add.

It is clear that Mr F didn't have the requisite qualifications to advise on pension transfers. And like the investigator, I think he should have known this from the outset. So if a fee had been paid for this service, I would recommend it be refunded. However, I am aware that in this case although a fee of £400 was agreed, this was never charged nor paid. So I make no award here.

But the central issue is that the transfer couldn't proceed without confirmation that Mr B had received appropriate independent financial advice. SJP provided him with a letter dated 13 August 2020 recommending against the transfer. This letter also stated:

*This means that for purposes of any declaration the [DB] scheme trustees ask you to sign you can state that you have taken advice on transferring, but you can confirm that the advice was **Not** to transfer and neither I, nor St. James's Place will complete any warranty or discharge forms for the scheme.*

So I think Mr B was aware at this time that neither Mr F nor SJP would sign **any** declaration.

The CETV didn't expire until 30 September 2020, but I've seen no evidence that Mr B sought to receive appropriate financial advice elsewhere at this time. In fact, from what I've been provided, Mr B waited over two-and-a-half years before taking any further action. This is in line with the email he sent to Mr F on 2 July 2020 where he said he was looking to transfer at age 55. Given this, I can't agree that SJP's mistake regarding Mr F's authority resulted in the loss of the transfer value available at that time or any subsequent losses Mr B says he's now suffered.

Mr B says he waited for this long because Mr F told him the transfer value would increase when he turned age 55. I've considered this carefully, but I've seen insufficient evidence that this was the case.

The August 2020 recommendation letter makes no mention of the transfer value increasing if Mr B were to wait. Considering the recommendation was to not transfer and an increase in the transfer value in the future would support this advice, I would expect it to be included in the letter if it was discussed. And the adviser's recollections are that it wasn't. So while I don't doubt Mr B's belief that this was said, on the balance of probabilities, I consider it more likely than not that the adviser didn't guarantee the transfer value would go up if Mr B waited to transfer.

Furthermore, I note that Mr B's normal retirement date was in 2028 when he turned 60. The DB scheme allowed for early retirement from age 55, but a reduction to the benefits would apply. So it's possible there was some misunderstanding here, as the DB pension Mr B would have received at age 53 would have been even less.

I can understand Mr B's disappointment with the reduction in the CETV and I know he thinks things should've been done differently. But I can only make an award if I'm satisfied SJP didn't act as it should've done and caused a loss as a result.

In this case, for the reasons I've explained above, I am not persuaded that Mr B suffered a financial loss as the result of SJP's mistake. But I do think SJP has caused him inconvenience and a loss of expectation about the transfer, at least up until 13 August 2020 when he learned that no declaration would be forthcoming.

So, for all these reasons, whilst I know Mr B will be disappointed with this outcome, I consider the £250 offered by SJP to be fair and reasonable compensation in the circumstances of this complaint.

My final decision

I uphold the complaint and direct St. James's Place Wealth Management Plc to pay Mr B £250 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 22 April 2024.

Jennifer Wood
Ombudsman