

## **The complaint**

Mr B is unhappy that St James's Place Wealth Management Plc (SJP) refused to provide advice relating to the transfer of his Defined Benefit pension scheme (DB scheme) and took too long to notify him of this.

## **What happened**

Mr B had a defined benefit pension from a previous employer, which had a cash equivalent transfer value (CETV) at just over £167,000 in April 2022. He also had various other smaller personal pensions, with combined values totalling just under £200,000. In July 2022, Mr B approached SJP to enquire about accessing the funds within these pensions. An initial fact find meeting took place, and Mr B signed letters of authority permitting SJP to approach his pension providers to obtain up to date transfer value figures. A new DB scheme CETV of just under £158,000 was obtained, which remained valid until November 2022.

At the time, Mr B was still working, as a sole practicing solicitor, drawing a small income. His intention was to transfer these pensions into drawdown facilities, and then drawdown these funds over a number of years (to minimise tax charges) and use the funds to gradually repay the interest-only mortgage on his home, which stood at about £270,000 at that time (subsequently reduced to just under £250,000 by the end of August 2022).

SJP made Mr B aware in August 2022 that they usually only accepted clients for DB advice if the value of the DB scheme was in excess of £300,000, with the exception being if it could be clearly demonstrated a client didn't need the retirement funds as part of their retirement strategy. They later advised Mr B of a second exception relating to significantly impaired life expectancy. SJP concluded neither applied to Mr B. And despite Mr B, and his Accountant, seeking to persuade SJP that Mr B didn't need the DB scheme income as part of his retirement, and a transfer was in his best financial interests, SJP's conclusion remained the same, and they confirmed their refusal to provide advice regarding his DB scheme.

Mr B was unhappy with this and complained to SJP. He said their approach was arbitrary and sought clarification how they objectively assessed their 'retirement strategy needs' test in each case. Mr B also complained SJP took too long to confirm their decision not to provide advice, leaving him with insufficient time to identify a new Advisor who would be prepared to provide the advice he was seeking before the second CETV expired.

SJP didn't uphold the complaint, although they did offer compensation of £350 to reflect the inconvenience Mr B had experienced due to the time they'd taken to confirm they weren't able to advise on the transfer. They also offered a separate £150 as an apology for the time taken to respond to Mr B's complaint. Unhappy with SJP's response, Mr B brought his complaint to this Service.

However, our investigator didn't think SJP had done anything wrong here. He thought SJP had made it clear in August 2022 that their policy was not to accept (less than £300,000) DB scheme transfer cases, and that Mr B was aware of the possible exceptions at that time. Our investigator said it was then up to Mr B to prove that he did qualify for one of the exceptions

in a timely manner, this also acting as a trigger to explore alternative Advisor options. And a telephone call at the end of September 2022 between SJP and Mr B made it clear they wouldn't provide advice, still leaving six weeks for Mr B to find an alternative advisor before the DB Scheme CETV quote expired.

Further exchanges between Mr B and our Investigator followed, but our Investigator's view remained unchanged. So, Mr B asked for an Ombudsman to review his complaint afresh and issue a Decision – and it was passed to me for this purpose. And having considered Mr B's complaint, I issued a Provisional Decision (PD), partly upholding it, in which I said as follows:

#### *My Provisional Decision*

*I can assure Mr B that I've read and considered everything he's provided, and this includes recent correspondence from his accountant.*

*But I should also explain that we're an informal dispute resolution service, set up as a free alternative to the courts. In deciding this complaint I've focussed on what I consider to be the heart of the matter, rather than commenting on every issue raised by Mr B in turn. This isn't intended as a discourtesy to Mr B. Rather it reflects the informal nature of our service, its remit and my role in it.*

#### *SJP's decision not to provide advice*

*I want to begin by addressing Mr B's concerns about SJP's criteria, and how they applied it here. I appreciate Mr B remains adamant he met the 'exceptions' that should have allowed SJP to provide the transfer advice he sought. However, I think it's important to recognise at the outset here that any firm of financial advisors can choose the criteria it sets for accepting any new client. And our Service can't 'compel' a firm to take on a client.*

*SJP's criteria, that it won't ordinarily consider providing advice on a DB transfer where the DB CETV is less than £300,000 was set out in their undated letter to Mr B (received by him on 23 August 2022). The relevant parts of that letter were:*

*"...the SJP policy...states we only accept transfer under £300k where the pot will clearly not be needed to sustain capital or income in retirement"*

*I think that statement is sufficiently clear in alerting Mr B, who was aware the value of his DB scheme was only just over half of that sum, there was a significant possibility SJP would not be able (or willing) provide the DB transfer advice he was seeking. And I think it's reasonable to have expected this statement to alert Mr B of the potential need to consider alternative advisor options, if SJP ultimately confirmed they wouldn't be prepared to provide advice.*

*Nevertheless, that statement didn't clearly state SJP wouldn't provide Mr B with the advice he was seeking, and he continued to engage with them believing he could prove he didn't need the DB scheme for his retirement needs. This exception is, however, less binary. It requires a subjective assessment of Mr B's circumstances – not whether the transfer is in his best interests (which would be full and regulated transfer advice), but rather whether Mr B fits SJP's minimum criteria (and exceptions) to allow them to consider his transfer and provide that advice. But it remains criteria that Mr B (or any prospective client) must satisfy, rather than SJP needing to satisfy Mr B (or any client) that he doesn't meet it.*

*I do think it's clear SJP's advisor met with Mr B with a clear intention and/or expectation that he would be able to provide pension 'transfer' advice, both in terms of the DB scheme and the other pension policies. That much is clear from an email the advisor sent to Mr B's accountant in the days after the accountant referred Mr B to SJP in July 2022.*

*I also acknowledge Mr B thinks SJP's subsequent exchanges with him, and particularly their willingness to meet with him in October 2022 to discuss the matter further, should be viewed as evidence of their willingness to continue exploring a solution – or put another way, they hadn't 'closed the door' on providing the advice he was seeking. And I think Mr B makes a fair point when he questions why SJP's advisor emailed Mr B's accountant shortly after the 23 August 2022 meeting, asking about the tax implications of Mr B taking the whole DB value as a lump sum – and that it gave the impression the advisor was still actively considering Mr B's request for advice.*

*However, I think those exchanges must be viewed in context. They were, essentially, driven by Mr B (and his Accountant) continuing to seek to prove he satisfied SJP's 'DB exceptions' criteria. They weren't exchanges driven by SJP.*

*Mr B has also said he believes that SJP were "bound to provide [him] with the advice [he needed] for a transfer of the [DB benefits]" because they'd asked the DB scheme for a new CETV on 19 July 2022. I disagree. There is no provision contained within the Financial Conduct Authority (FCA) DISP Rules that compels a business to provide advice to a client purely by virtue of that business seeking fund value information from a different provider.*

*However, I acknowledge that SJP sought this new CETV only days after the previous one had expired. And I think SJP should reasonably have been conscious that, before seeking the second CETV, it was unlikely to differ greatly at that time from the first one, and certainly not to the extent it would have increased from £167k (the first CETV) to a sum closer to SJP's default £300k DB transfer criteria. But, as I'll comment on below, it's fairly apparent SJP hadn't at that time 'linked' Mr B's DB scheme value with their own criteria restrictions. However, that failure doesn't mean SJP became bound to provide advice. Their right to consider the response to the second CETV request (and responses to the other transfer values for Mr B's other pensions requested at the same time) before deciding whether to take Mr B on as a client remained.*

*Ultimately, SJP decided they wouldn't provide advice, and that was a conclusion they were entitled to reach. As I've said, I can't tell SJP to take Mr B on as a client or provide transfer advice on his DB scheme. But I can consider whether SJP treated Mr B fairly in how they dealt with Mr B when assessing whether he met their exception criteria.*

#### *The first exception – significantly impaired life expectancy*

*SJP's file notes show Mr B was told this was an 'exception' during a phone call on 28 September 2022. It then appears Mr B, during a subsequent meeting with SJP on 12 October 2022, told SJP he suffered from chronic fatigue syndrome and his family lived to an average age of about 72 years (Mr B was 65 at this time). The notes also record that Mr B accepted he'd be unable to provide medical confirmation regarding "his longevity".*

*Whilst Mr B (and his Accountant) continued to make some representations regarding his health, I haven't seen anything being provided to SJP that would evidence a 'significantly impaired life expectancy' that could have triggered a more detailed consideration of this exception. Accordingly, I'm satisfied SJP fairly considered this 'exception' once Mr B made them aware of his above medical condition, and in the circumstances, I don't think their conclusion - that Mr B didn't meet the 'health exception' – was unreasonable.*

#### *The second exception – DB funds not needed for Mr B's retirement strategy*

*I appreciate Mr B is significantly more aggrieved by SJP's conclusions here than with their 'health exception' conclusion. He's adamant he proved to SJP he didn't need his DB pension*

to support him financially in retirement, and he remains aggrieved at statements they'd made about the limits of his available retirement funds.

SJP's fact find document, prepared after their first meeting with Mr B, included (in addition to information about all of his pensions mentioned above) the following about his financial circumstances, and requirements:

- He lived off a credit facility, whilst running a trading loss with his business (which could be offset against any pension drawdown income).
- He was chasing the Legal Aid Board for up to £3million in outstanding invoices – although noted that there's a significant chance this will never be recovered.
- His essential monthly expenditure (undefined) was £1,000, plus a further £500 of (again undefined) discretionary monthly expenditure.
- He had £3,000 cash available.
- He had only one liability, the £267,245 the interest only residential mortgage - against a house estimated to be worth £800,000. No other assets were recorded.
- His mortgage facility allowed drawing against it, up to £273,000. This expired in 2026.
- He intended to draw his pension benefits at 70.
- His priorities were listed as:
  - Looking to consolidate pensions into a drawdown facility, using tax-free cash (TFC) initially to partly redeem mortgage, then use lump sum withdrawals over next four to five years to reduce further.
  - He was aware this will diminish retirement options but clearing debt a priority.
  - He said he can live frugally, using his state pension, plus a small DB income. In future, he would consider 'trading down' (presumed to mean down-sizing property) or reluctantly take out equity release.

Based on an apparent assessment of this information, SJP told Mr B he didn't satisfy the criteria for the 'retirement strategy' exception. Mr B's accountant countered this by supplying SJP with Mr B's solicitor practice turnover and net profit figures – showing turnover reducing from £39,910 in 2017/2018, to £17,260 in 2020/2021, with net profit reducing from £8,088 to £4,268 in that period. Mr B's accountant also said this income would continue for the foreseeable future, meaning the DB pension wouldn't be required for Mr B to "maintain his current lifestyle". But this didn't change SJP's mind.

SJP haven't supplied me with any documents to show how they assessed all of the above information – from July/August 2022 after the fact find, up to the point they considered (and discounted) the income/expenditure information the accountant provided in October 2022. Although I have seen exchanges where SJP appear to question the longer-term certainty of Mr B's earned practice income, and that his state pension alone appears to be insufficient to sustain his retirement needs. Further, it's clear they assessed and concluded Mr B was likely to have needed his DB pension income to sustain those needs. I appreciate Mr B was angry that SJP may have ignored the fact he may have been able to draw a pension from (some of) his non-DB policies and may not have fully considered the extent to which his unpaid 'Legal Aid' fees may eventually be paid. He was deeply unhappy SJP concluded, if he'd transferred and utilised his DB scheme funds as he'd hoped, he'd have had "no other" retirement income to fall back on other than his state pension.

But I think this does show that SJP considered the information Mr B provided, regardless of whether they reached an outcome he strongly disagreed with. And I think it's also worth noting that I can't see Mr B provided SJP with any detailed analysis of what his anticipated

post-retirement expenditure would be, to support his assertion that he could live frugally, and so potentially prompt SJP to reconsider their conclusions in relation to this exception.

So, whilst I'm satisfied SJP met with Mr B, and entered discussions, with the genuine intention to be able to provide advice, it eventually became clear Mr B's circumstances were such that SJP would only be able to provide advice if their internal 'exceptions' criteria were met. Mr B provided some evidence to support why he felt he met the exceptions criteria, but SJP were entitled to conclude otherwise, which here they did. In these circumstances, I don't think SJP acted unreasonably or unfairly. They alerted Mr B to the exceptions criteria and appeared to have considered his various responses in reaching their conclusions.

#### Delays in notifying Mr B that SJP wouldn't provide DB transfer advice.

SJP has confirmed their advisor who met with Mr B in July 2022 wasn't DB authorised, so needed to refer Mr B's case to a "Pension Transfer Specialist Partner". From the evidence I've seen, this first happened by email on 11 August 2022, resulting in SJP's letter to Mr B sent on 15 August 2022 (but only received by him on 23 August 2022).

I understand SJP wouldn't have been fully aware of Mr B's pension portfolio, or what he wanted to do with his DB scheme, in advance of the 19 July 2022 meeting. And I appreciate the SJP advisor wasn't qualified to give DB transfer advice. However, I don't think that is relevant here. I think it should have been clear to SJP's advisor almost from the outset that Mr B wasn't a consumer who met their standard DB transfer criteria – it was clear at that first meeting that his DB scheme had a CETV, expiring on 29 July 2022, of just over £167,000 at the time – a sum significantly below the usual minimum criteria. But it then took over three weeks for the advisor to become aware of and/or tell Mr B about SJP's criteria and the exceptions that may apply. I'm unaware of any reason that explains or justifies why it took that much time, or any reason why Mr B couldn't have been told about this within, say, one week of that initial meeting – given the fundamental nature of the criteria in this situation.

I also think there was a further delay after Mr B and SJP's meeting on 23 August 2022. SJP phoned Mr B on 28 September 2022, to confirm they wouldn't be providing him with any DB transfer advice (although advice in relation to the other pensions he had was still possible if he wished to still consider this). From the records I've seen, SJP's advisor didn't consult with their internal DB specialist (who confirmed Mr B's known circumstances at that time didn't meet their exceptions criteria) until 26 September 2022 – so five weeks after that meeting. This was communicated to Mr B two days later. I'm not sure why it took five weeks to make those internal enquiries – I think no more than two weeks should have been reasonable.

I appreciate Mr B thinks SJP's actions after their 28 September 2022 phone call meant they were still actively considering his request and obtaining the transfer advice was still a realistic option. And it's clear Mr B, his accountant and SJP continued exchanges after that phone call, including his accountant providing more information – his recent practice income and profit – to try and show that he didn't need to rely on the DB scheme in retirement.

However, I think it's clear these 'post-28 September 2022' communications were driven by Mr B continuing to try and persuade SJP they should reconsider their outcome. I must be clear I'm in no way criticising Mr B for his actions in pursuing SJP to change their mind – that was his choice. But I think it should have been reasonably clear to Mr B by the date of that phone call SJP were highly unlikely to provide the advice he was seeking, and that was the latest time it would have been reasonable/prudent for him to explore other advisor options.

So, taken together, I think it's clear Mr B experienced delays in SJP considering the evidence they had, and notifying him that he didn't meet their exception criteria and wouldn't

*be providing advice. I think SJP's phone call of 28 September 2022 was the time when he should reasonably have become aware this was the likely outcome, although this call should have been made about five weeks earlier than it did - meaning Mr B would (should) have been aware of SJP's final decision – and as I've said put on notice to explore alternatives – by 24 August 2022 at the latest.*

### *The effect of the delay*

*Mr B has consistently said that SJP's delays in notifying him of their criteria and confirming their decision left him with insufficient time to source and engage another advising firm who may have been able to provide the advice he was seeking. Essentially, he says he lost the opportunity to try and achieve this prior to the expiry of his CETV on 10 November 2022.*

*In principle, I agree with him. Had SJP notified him of their decision by 24 August 2022, it would have given him two and a half months to begin sourcing an advisor who'd have been prepared to agree to provide the DB transfer advice he was seeking, as opposed to just over six weeks (the amount of time after the 28 September 2022 phone call).*

*So I need to consider what I think is most likely to have happened, had SJP's '28 September 2022' phone call taken place five weeks earlier. I think the fairest way to approach this is to begin by considering what did happen after the 28 September 2022 call.*

*As I've already said, Mr B continued to engage with SJP, and as I understand it wasn't until after a further phone call with SJP on 13 October 2022 (again confirming SJP wouldn't provide advice) that Mr B started to accept their decision. I note it's only at this point that he made attempts to source another advisor. I've no reason to conclude these exchanges wouldn't have taken place had Mr B been told of SJP's decision five weeks earlier, and so applying the same timeframe would suggest Mr B would have started making enquiries with alternative advisors by about 8 September 2022.*

*However, whilst this is still two months before the second CETV expired, I think it's still a fairly short amount of time to successfully source a new firm and, even if the transfer values obtained by SJP were used, get to a stage where any advice process was completed.*

*Mr B says his original enquiries drew a blank because the advisors he spoke to said there wasn't enough time to consider the request, let alone conclude that a transfer would have been in his best interests, and be recommended accordingly, before the CETV expired.*

*I appreciate the looming CETV expiry was a key factor in Mr B's thoughts at that time – he believed any further/'third' CETV value would have likely been significantly reduced due to changes in the investment markets at that time – resulting in a smaller sum to draw down over time to help repay his mortgage. I'm unaware if Mr B did seek a further CETV, or if he continued trying to find a new financial advisor who would agree to his request to provide the DB transfer advice he was seeking, albeit with a reduced further CETV.*

*I also think that, in view of the regulator's guidance - that a transfer out of a DB scheme won't usually be suitable - I can't reasonably conclude it's more likely than not that Mr B would have found an adviser who agreed the transfer was suitable, or if they didn't think it was suitable, was prepared to facilitate the transfer on an insistent client basis in that limited two-month period.*

*What this means is that it's impossible for me to reasonably conclude – had SJP told Mr B on 24 August 2022 – he would have successfully engaged an alternative advisor, who would have been willing to provide (and subsequently provide) advice to transfer out of his DB, and that a transfer would have concluded prior to the expiry of the second CETV on 10*

*November 2022. And it therefore follows that I can't reasonably conclude that SJP's delays prevented Mr B from being able to achieve that outcome.*

### *Distress and Inconvenience*

*Notwithstanding the above, I think it's clear SJP's delays caused Mr B considerable distress – which they have acknowledged in their initial £350 compensation offer. But I also think that distress is compounded by the loss of opportunity (to source another advisor) their delays caused and the distress associated with that. I don't think £350 fairly reflects that distress. Taking all of the above into consideration, I think £500 is a fairer reflection of the distress and inconvenience SJP's delays caused Mr B.*

*I should add here that our distress awards are not designed as a punishment, and our awards are fairly modest in monetary terms. Guidance regarding how we assess distress compensation awards can be found on our website.*

*I note that SJP also offered Mr B £150 for the delays in the handling of his complaint. Complaint handling isn't a regulated activity (under the DISP Rules), and so it isn't something I can adjudicate on here. It remains a matter for SJP if they wish to extend that offer to Mr B now – as I'm aware he hadn't accepted either of the SJP's initial offers when he brought his complain to our service.*

### **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.

SJP responded to my PD, accepting what I'd suggested, but asked this complaint not be treated as a 'change in outcome', as the amount of D&I I'd awarded matched the combined D&I and delayed complaint handling compensation they'd already offered Mr B.

Whilst I note their comments, I must point out that I've awarded an increased amount of D&I for the distress and inconvenience SJP's actions caused Mr B. SJP had offered £350, but this didn't take account of what I felt was extra distress Mr B had experienced as a result of the loss of opportunity to source another advising firm, so I increased the D&I to £500. This is a change in outcome.

I appreciate this amount equates to the total amount SJP had offered, but their combined offer included their offer of £150 to apologise for complaint handling delays – which isn't a regulated activity and so not something I can consider here. I think my PD makes that point clear. I also said it was a matter for SJP to decide if they still wished to extend that separate offer to Mr B – which they've now said they are not prepared to do.

Mr B also responded to my PD, initially telling our Investigator that he may require more time to consider his response, and when pressed to provide reasons for needing this, responded by explaining that he had been unwell and also experienced some unfortunate building incidents at his home. I'm sorry to hear of both these events, and wish him a speedy recovery/resolution, especially at this time of year.

Mr B also said that he was still waiting for a current transfer valuation from his DB scheme administrators. He says this is preventing him from seeking "*the professional advice which the Ombudsman now seems to indicate was missing from my evidence previously supplied. I did not appreciate beforehand that I was expected to obtain such from another source*".

And as well as repeating that he doesn't understand why SJP didn't give him the transfer advice he was seeking, based on the merits of his request, in the first place, Mr B also asked to be given more time to "*obtain suitable advice, if required, and know the date or dates on which I should have obtained advice to draw down my DB pension*". Mr B concludes by welcoming the award of £500 D&I recommendation.

I'll address these points now, as I believe there may be a misunderstanding regarding the outcome of my PD. I'd concluded SJP's delays meant Mr B had less time that he should have had to consider sourcing alternative advisors and/or potentially sourcing further 'positive' advice. And I commented that, when Mr B became aware SJP wouldn't provide the advice he was seeking, he didn't seek a further CETV and didn't (or wasn't able to) seek or secure alternative positive transfer advice from a different advisor. Those were statements of fact, or at least based on the facts available to me from what had happened, or didn't happen, at the time. And I included those comments because they appeared to show Mr B's efforts to proceed with his DB transfer enquiries appeared to have ceased at that time.

But those comments don't mean, and I certainly didn't intend them to mean, I'd concluded Mr B's evidence was deficient in any way – or indeed that he *should* have made such enquiries at the time (or during his subsequent complaint journey with us), or that I thought Mr B was *expected* to get such advice now.

The same applies to the issue of any new CETV. I didn't recommend, or I think imply, that an updated CETV was needed (the existence of which may then prompt Mr B to make further efforts to locate an advisor who could now provide the transfer advice he was seeking).

Naturally, it's open to Mr B to consider such actions at his leisure, but the outcome of those enquires now would have no bearing on my consideration of his complaint about SJP's actions in 2022.

I didn't think it was likely and couldn't reasonably conclude Mr B would have been able to secure the advice he was seeking (and conclude a transfer) in the short period available before the CETV expired on 10 November 2022. And Mr B hasn't been able to provide any evidence – from the time in question or shortly afterwards (because it presumably doesn't exist) – suggesting it was likely he'd have secured the desired advice had SJP's delays not occurred (and effected the transfer before the 10 November 2022 CETV expiry) that would lead me to reach a different conclusion now.

I don't wish to delay the resolution of this complaint unnecessarily (and with it, Mr B's opportunity to be paid the D&I awarded at the earliest opportunity), and for the reasons outlined above see no reason to await the receipt of a new CETV from Mr B. Accordingly, I'm issuing my Final Decision on this complaint now.

### **My final decision**

I uphold Mr B's complaint against St James's Place Wealth Management Plc and require them to pay Mr B £500 compensation for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 9 February 2024.

Mark Evans  
**Ombudsman**