DRN-4868481

The complaint

Mr L has complained about the advice he received from St. James's Place Wealth Management Plc ('SJP') to take out a pension plan.

What happened

In 1996 Mr and Mrs L met with an adviser from SJP (formerly known as J. Rothschild Assurance) to discuss, amongst other things, how to make arrangements to repay their new interest only mortgage that was about to come into force for a new house they were purchasing. The adviser recommended that Mr L should take out a personal retirement plan ('PRP') with SJP (under the J. Rothschild Assurance name). The premium payable was arranged to increase each year, life cover and waiver of premium was also included, and premiums were to be invested equally between three managed funds. The adviser said that the tax free cash sum that was accrued under the plan should be used to repay the mortgage.

In 2023 a representative of Mr L sent a complaint to SJP stating that he'd been given unsuitable advice by the business. The representative understood that Mr L had been advised to take out a free standing additional voluntary contribution ('FSAVC') policy by SJP. It said that as he was a member of the NHS pension scheme at the time, Mr L should instead have been advised to make contributions to the NHS scheme.

SJP did not respond to the complaint and so Mr L's representative resubmitted it. In April 2024 SJP wrote to the representative saying that the PRP was not a FSAVC. It said that it had limited documentation from the 1996 sale, but based on the evidence it had, it did not consider the advice to take out the PRP was unsuitable.

On Mr L's behalf, his representative brought a complaint to this service. It said that bearing in mind his membership of the NHS scheme, it considered SJP's advice to take out the PRP was unsuitable. The representative said that SJP should instead have recommended that Mr L contribute more to the NHS scheme, and it said that he'd been financially disadvantaged as a result.

Our investigator did not uphold this complaint. She considered the rules of the Personal Investment Authority ('PIA'), which was the regulator at the time of the sale, and in particular Regulatory Update 20 ('RU20'). This update restated rules which were in place under the previous regulator. In relation to sales of FSAVCs by tied advisers (which SJP's adviser was), RU20 stated that in-house alternatives to FSAVCs should be brought to a consumer's attention, a consumer should be directed to his employer's scheme for more information on in-house options, and generic differences between a FSAVC and in-house routes should be discussed.

Whilst noting that RU20 only related to the relative merits of FSAVC and in-house AVCs, the investigator commented that if the PRP had been sold solely as a means to increase Mr L's pension provision, she would have expected RU20's requirements to have been met. But here, the investigator said Mr L was seeking a way to build up funds to repay the new interest only mortgage. On balance her view was that the recommendation to take out the

PRP was suitable as it provided a tax efficient way for Mr L to both aim to repay the mortgage and increase his pension benefits.

Mr L's representative didn't agree with the investigator's findings. It said that although it had originally understood that Mr L had taken out a FSAVC, the fact that he'd been recommended to take out a PRP to repay an interest only mortgage reinforced its belief that the advice was unsuitable. The representative commented that the initial £400 monthly premium under the PRP was not guaranteed to repay the mortgage in full and provide additional income in retirement. Instead it said that aiming to repay the mortgage via a pension plan was too high risk for Mr L when compared to the guarantee of repayment that applies with a capital repayment mortgage. It also said there were guarantees available if Mr L had made additional contributions to the NHS scheme.

The investigator responded that taking into account the £400 monthly premium was arranged to increase in line with an index, the tax free cash was projected to repay the mortgage, and would also increase Mr L's retirement income. In terms of whether the mortgage should have been set up on a repayment basis, she commented that when the SJP adviser met Mr and Mrs L, the mortgage had already been arranged as interest only. She said that the SJP adviser was asked to arrange a tax-efficient repayment vehicle for it.

The investigator accepted that if Mr L's objective had only been to increase his retirement income, paying more into the NHS scheme might have been appropriate. However, she said that Mr L was looking for a way to repay the mortgage, and it was recorded that the lender would not accept the tax free sum from the NHS scheme for this purpose because a notice of interest could not be put in place with the scheme. As a result the investigator remained of the view that the recommendation from the SJP adviser to take out the PRP was suitable.

Mr L's representative confirmed that it wanted the complaint to be reviewed by an ombudsman.

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 Mr L met the adviser in June 1996, it was recorded that he was self-employed and earning around £77,000 a year, whilst Mrs L was an employee earning just under £15,000 a year. Their monthly net disposable income was calculated to be £3,885. Mr L was a member of the NHS pension scheme paying a 6% contribution of his earnings, and Mrs L was also a member of an occupational pension scheme.

The adviser noted that Mr and Mrs L's main concern was setting up cover for the repayment of their newly arranged mortgage, including cover in the event that Mr L were to die. It was recorded that Mr L wanted "*to create additional retirement income as well as a repayment vehicle for the domestic mortgage*". Mr and Mrs L already had a mortgage with their bank for their existing home, and that mortgage was to remain in place together with further borrowing from the same bank for their new home. The mortgage had been arranged on an interest only basis.

Mr and Mrs L already had an endowment in place as the repayment vehicle for their existing mortgage. The SJP adviser recorded that the bank had originally proposed that Mr and Mrs L take out a new endowment to cover the increased loan amount. However he said that the net cost of a new endowment plan to cover the increased mortgage was the same as the net cost of a pension policy set up with the intention of its tax free cash repaying the loan.

The adviser recommended that Mr L take out the PRP as the sole repayment vehicle for the mortgage, leaving the existing endowment in place as a savings plan, no longer linked to the mortgage. He said using the A9 statutory concession would allow tax relief to be claimed for contributions under both the NHS scheme and the PRP. It was noted that the NHS tax free sum was not acceptable to the bank as the designated means to repay the mortgage because the NHS scheme did not allow a notice of interest to be registered. The adviser recorded that Mr and Mrs L would use surplus income to make capital overpayments on the mortgage. The £400 premium paid to the PRP would be indexed to increase each year.

Summarising his recommendations, the adviser wrote that Mr and Mrs L were seeking a tax efficient way for repaying their mortgage, and this was their main priority at this time. Mr L was a higher rate tax payer. The projections for the possible value of the PRP in the future showed the tax free sum being sufficient to repay the mortgage when Mr L reached age 65, but the adviser stated that increased funding might allow the mortgage to be repaid earlier if required.

Mr L's representative has stated that a strategy to repay the mortgage via a pension plan was too high risk for him, and a capital repayment mortgage should have been arranged instead. In terms of setting up an interest only loan where there was a need for a separate vehicle to repay it, I note that Mr and Mrs L had arranged their previous mortgage in this way. For that earlier mortgage, repayment was to be made via an endowment policy.

Mr and Mrs L's attitude to risk was not recorded by the SJP adviser. However it seems to me that having previously arranged an interest only mortgage that required an investment policy to repay it, on balance Mr and Mrs L were comfortable with the risks associated with such an arrangement. As the representative has said, there was no guarantee that the PRP would achieve a sufficient fund to repay the mortgage in full from the tax free sum. But based on Mr L's decision to accept the new mortgage on an interest only basis, having agreed to this with his earlier mortgage, overall my view is that it was suitable for the adviser to recommend an investment product as a means to repay the new mortgage.

Mr L's representative has said that making extra payments to the NHS pension scheme would have attracted guarantees in terms of the benefits, in contrast to benefits under the PRP which were dependent on investment returns. As the investigator pointed out, regulations relating to FSAVC sales required that a consumer should be directed to their employer's scheme for more information on in-house options where they were considering increasing their pension contributions. On this occasion however, the main priority recorded for Mr and Mrs L was to arrange a tax efficient way to repay their new mortgage, and it wasn't possible for a notice of interest to be registered in the NHS scheme for the bank.

Mr L was able to claim tax relief at the higher rate for the PRP premiums, and it seems likely to me that this was why the costs of the PRP compared favourably against taking out a further endowment plan. Had Mr L only been seeking to increase his pension provision, I would agree with the representative that additional contributions into the NHS scheme may well have been a better option than taking out the PRP. But taking into account that Mr L was looking primarily at how best to repay his new mortgage in a tax efficient way, whilst also seeking to create additional retirement income, overall my view is that the advice given to take out the PRP in 1996 was reasonable.

My final decision

My final decision is that I do not uphold this complaint, and I make no award.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr L to accept or reject my decision before 1 January 2025.

John Swain
Ombudsman