

The complaint

Mr J complains about aspects of St James's Place Wealth Management Plc's (SJP) service. In particular that it acted unreasonably, and without transparency, in connection with fees it proposed to charge when he wanted to make a withdrawal from his pension. Mr J says he's suffered a financial loss as a result of SJP's actions.

What happened

Mr J had been a client of SJP's since about 2015. The terms and conditions said under the heading of "advice charges"

"Our advice is not free. The charges described below include the costs of advice. If you ask us to stop providing you with ongoing advice, we will rebate units into your Plan equivalent to the cost of that ongoing advice. Your personalised illustration shows the cost of the advice and how this relates to your Plan".

Around March 2020, Mr J said he wanted to make a withdrawal from his pension (crystallisation) to release tax-free cash of around £70,000.

Under a separate heading "*Additional Advice Charge*" in the form that SJP prepared for Mr J at the time, it contained no values. The whole section was struck through (as noted below, SJP later said it waived the charge).

It seems there was a discussion between Mr J and SJP around October 2022 during which he apparently raised concerns about the amount of fees SJP charged. SJP apparently told him that its fees wouldn't be capped to the levels he'd proposed. So, given Mr J's strong feelings on the matter, SJP suggested he might want to shop around to compare other advising firms/providers charging structures.

In early 2023, Mr J indicated he wanted to take a further withdrawal to release the remaining tax-free cash. It seems his intention was initially to top up his wife's pension, but he then indicated he wanted to use the tax-free cash to offset against his mortgage.

In an email dated 8 February 2023 SJP explained, amongst other things, that given the work needed, it would apply a 2% fee on the amount to be crystallised. It added that whilst it had waived this charge in 2020, it couldn't do the same thing again. An alternative was for Mr J to transfer his uncrystallised fund to another provider and ask them to do the same thing but there would most likely be charges involved there too. In any event, Mr J would need to investigate this for himself as *"they may also have their own requirements from an advice/suitability perspective"*.

Mr J queried whether there would be a charge if he opted to withdraw the remainder of the tax-free cash lump sum, rather than a proportion. SJP confirmed there would be a charge if Mr J crystallised the remainder of his pension (irrespective of the amount). It added *"being objective, if you moved the money to another provider/IFA you would still have to pay some charge as the FSA rules require all providers to establish the investor has sought advice"*

where funds are valued over £30,000 before they accept new transfer funds. I know this sounds very prescriptive but it's for everyone's protection".

SJP prepared an illustration for Mr J in relation to a flexible drawdown. It initially indicated there would be an Additional Advice Charge of £8,400.

In his response, whilst asking SJP to complete the necessary paperwork to enable him to release his remaining tax-free cash, Mr J said that if SJP charged the 2% fee mentioned, he'd be looking to transfer the balance of his fund elsewhere.

SJP completed the paperwork and a suitability report dated 14 February 2023. It said it intended to charge a fee of £4,166, which was less than half the amount initially quoted. In response to a query from Mr J, the adviser clarified that the 2% usually charged was a percentage of the residual fund being crystallised. But he'd agreed a concession to reduce the charge in Mr J's case.

Mr J indicated to the adviser that he was in discussions with other providers about potentially moving his uncrystallised funds to avoid paying the £4,166 that SJP was proposing to charge him. Mr J said he'd update the adviser once he'd made his final decision. In the meantime, he asked some other questions about charges – including exit fees – which the adviser attempted to address in an email dated 14 March 2023. Mr J decided not to proceed with the withdrawal.

The adviser who had been dealing with Mr J's account up to this point retired around May 2023. Mr J had been in discussion with the adviser for some months prior to that about who was going to replace him. He says he received a brief call from a new adviser in early June 2023, promising a call back the following day. That call didn't materialise.

Mr J complained to SJP on 14 June 2023 and raised a number of different concerns. Those included:

- Its failure to service a smooth handover when his adviser retired.
- The fees SJP proposed to charge when he wanted to take a tax-free lump sum from his pension in 2023 – especially when he didn't recall being charged for making a similar withdrawal in 2020. Mr J said he was confused about what the charge represented and why it was a percentage of the funds crystallised. And, despite the adviser stating that the charge would be 2% of the amount crystallised, the suitability report quoted a different amount of £4,166. Mr J asked a number of different questions about the charge, including why it didn't come under the "*normal advice fees*".
- Potentially misleading advice on the possible transfer of his pension. He was told he'd likely incur fees if he moved providers and would probably have to demonstrate he'd taken advice before transferring. He'd since established that the requirement to seek advice only applied where there were safeguarded benefits, which didn't apply in his case.

Around 9 August 2023, Mr J told SJP that he needed to create some liquidity, so he was looking to withdraw an additional amount in tax-free cash. However, he said SJP's delay in resolving the complaint had left him in a difficult position, so he expected it to waive any fees associated with the withdrawal.

SJP responded to the complaint on 11 August 2023. It accepted there was a period of a couple of weeks where Mr J wasn't contacted between the previous adviser leaving and a new one taking over. It also accepted the new adviser didn't contact Mr J as promised.

Concerning an Additional Advice Charge it said:

- Although the documentation didn't specifically confirm the waiving of the fee in 2020, it showed evidence of its existence. The fact that this was not applied at the time suggested a discussion had taken place about waiving this fee.
- The fee was mentioned in the "*services and costs disclosure document*", which was given to Mr J with the suitability report – in any event Mr J hadn't actually paid it.
- It was something that could be applied on events such as pension crystallisation to acknowledge the amount of work completed.
- Following the implementation of the Financial Conduct Authority's (FCA's) Consumer Duty, it had decided to remove this charge. But it was entitled to say the charge would apply at the time Mr J was looking to crystallise further funds.

Erroneous advice:

- The adviser's comments had been misunderstood. The adviser's recollection is that he explained the requirement for providers to ensure anyone moving a pension had sought appropriate financial advice, even if that advice is subsequently ignored by the consumer.

SJP said there was no evidence of wrongdoing on its part, so it wouldn't be refunding Mr J's mortgage interest and the other losses he'd referred to. However, it did accept that certain things could have been handled differently – particularly around the time that the advisers changed. It offered a total compensation payment of £150 for any inconvenience caused.

Mr J didn't accept SJP's response. He made further comments in a letter dated 8 September 2023. Again, he referred (amongst other things) to its fees being "*excessive, unjustifiable, and not transparent*". Concerning a discussion that apparently took place in 2020 about the waving of fees, Mr J said "*I find your conclusion that a discussion took place on fees based on these circumstantial elements unsound. As IFA's advising clients, I believe that you have a duty to make full and frank disclosure and clearly document that you have done so*". He also thought SJP had been determined to hold onto "*rip off charges and fees*" until the FCA's deadline (concerning the introduction of Consumer Duty) approached. He again set out his financial loss claim and said he expected SJP to make good his losses.

I understand that Mr J worked with the new adviser to make a further withdrawal from his pension around September 2023.

Mr J complained to the Financial Ombudsman Service setting out the background events (as described above) leading to his complaint and the losses he expected SJP to put right. He added that at no point had SJP justified its charges for making a tax-free cash withdrawal.

One of our Investigators was assigned the complaint. She didn't agree with the substance of Mr J's complaint regarding the fees and 'erroneous' transfer advice he'd been given. So, she didn't think SJP was responsible for the losses Mr J said he'd suffered. And whilst she acknowledged that some of what SJP said wasn't entirely accurate (in terms of when financial advice might need to be sought on a pension transfer), she was satisfied that it hadn't prevented Mr J from approaching another adviser. But she did conclude that some of its communication could have been clearer in terms of previous concessions made to fees and what the proposed charges were based on. The Investigator recommended that SJP pay Mr J an additional £200 compensation on top of the £150 it had already offered (making £350 in total). Although Mr J was satisfied that our Investigator gave him a "*detailed and considered response*" there were aspects of her findings that he didn't agree with, so he

made some further comments in response. Those included that he was “*being exploited by an unfair negotiating position*”.

SJP also made further detailed comments. Those included:

- When it gave Mr J advice in 2020, the documentation explained that a charge may be agreed with the partner to cover the advice received. So, Mr J was aware of the charges that might apply.
- It is a business’ decision to decide what fees are charged for the products and services it offers. It was therefore within its rights to potentially charge an Additional Advice Charge in 2023. It’s only obliged to record what fees it charges for its advice.
- Mr J was free to contact another adviser if he felt they offered advice on more preferential terms.
- When it gave advice in 2023, it was unaware of any impending decision to remove the Additional Advice Charge.
- It accepted that the adviser’s email of 9 February 2023 was misleading as the requirement to seek advice on a fund valued at over £30,000 only applied where there are safeguarded benefits involved. However, it didn’t think this warranted a further compensation payment in respect of any inconvenience suffered.

The Investigator noted Mr J and SJP’s responses, but she wasn’t persuaded to change her opinion. So, the matter has been passed to me to decide.

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 fully appreciate Mr J’s strength of feeling about the matters leading to it – particularly concerning SJP’s fees, which he doesn’t think are justified or transparent. I won’t be referring to each individual point made here, instead I’ll focus on what I see as being the key issues at the heart of this complaint.

My role is to say whether SJP treated Mr J fairly and reasonably overall. So, I’ve thought about key questions such as whether it was fair and reasonable for SJP to say it would apply a charge in the particular circumstances described here, and whether it communicated with Mr J in a way that was clear; fair and not misleading.

I can see that SJP has provided various responses to Mr J which said, amongst other things, that it was entitled to say he should expect to pay an Additional Advice Charge (even though he didn’t *actually* pay it). It’s also pointed him to various documents, such as terms and conditions, which explain what an Additional Advice Charge is. As I’ll set out shortly, on balance, I’m satisfied that SJP was entitled to tell Mr J it would apply the Additional Advice Charge (I appreciate he didn’t actually pay it). But, I’m not persuaded that SJP’s record keeping and communication has always been as good as it could have been. Or that its responses always appreciated and tried to address the more nuanced points that I think Mr J was making. And I think that’s culminated in Mr J’s opinion that SJP hasn’t been transparent about its charges. It’s also clearly heightened his frustration. I’ll set out later on what I intend to direct SJP to do about this now.

Was it reasonable for SJP to tell Mr J it intended to charge an Additional Advice Charge in 2023?

Mr J's service agreement meant that he paid an ongoing advice charge. On top of that, he was entitled to ask for advice on an 'ad hoc' basis. As I understand things, depending on the type of advice sought and the nature of the work that SJP was required to carry out, it might have applied an Additional Advice Charge. Although the documentation prepared in 2020 did say that advice charges might apply, SJP didn't actually apply an Additional Advice Charge in 2020 – the whole section on the form was struck through. SJP has since suggested that was because the adviser waived the charge as a gesture of goodwill – that seems a reasonable assumption to make. There's no record of a discussion taking place with Mr J about the concession that SJP made at the time. And Mr J doesn't recall any discussion either. Given that and the fact that there's no entry in the documentation, I can't be certain about what Mr J knew at the time.

In any event, I can see that when Mr J mentioned crystallising more of his pension in 2023, SJP told him that additional work would incur a 2% charge. It also told him upfront that although it had waived a similar charge previously, it couldn't do the same thing again. It mentioned too that Mr J might wish to contact other advisers about completing the work, but that would likely come at a cost. I've thought about SJP's actions here.

It's not for me to tell SJP what charge it should apply for its services. And in general terms, I think it's fair for a business to charge for its work and expertise, providing it is clear about the charge it intends to apply and can demonstrate it carried out the necessary work. Here, regardless of Mr J's feelings on the matter, I think SJP made it clear fairly early on that if he wanted to go ahead with the advice process and withdrawal, he should expect to pay an Additional Advice Charge. It also pointed to the terms and conditions that allowed it to do that. So, I don't think it would be fair to say it acted unreasonably in saying that a charge applied in Mr J's particular circumstances. Importantly, it made this clear before it started the necessary work.

I fully appreciate that on the basis it had waived a charge previously, Mr J may have felt SJP should do the same thing again. But that alone wouldn't persuade me that it had acted unfairly or unreasonably when saying it wouldn't do so in 2023. So, it seems to me that Mr J had a choice to make here – leave his arrangements as they were because he wasn't happy to pay the charge that SJP intended to apply or perhaps seek the advice of a different adviser. Although the evidence suggests he was in touch with other advisers, I don't know what the outcome of those conversations was. Ultimately, Mr J chose not to pay the charge – even when SJP offered to reduce it by over half.

Mr J's since indicated that SJP's actions led to him re-thinking his plans, which in turn caused him to suffer a financial loss. I agree that Mr J likely paused his plans on the basis of what SJP told him about charges. But, on balance, I don't agree with him that SJP is responsible for any losses that followed.

I've already said why SJP would have been entitled to charge an Additional Advice Charge in these particular circumstances. But by offering to reduce the amount by over half, I think SJP tried to reach what it evidently thought was a sensible compromise with Mr J to help him realise his plans. Also, given what Mr J said about potentially taking his business elsewhere if SJP tried to apply a 2% charge, it's possible SJP had that in mind too. And whilst I accept that it perhaps wasn't the kind of concession that Mr J was hoping for or expecting, I'm nevertheless satisfied it was a reasonable action for SJP to take. And if Mr J wasn't happy to pay the charge, even once reduced, that was a decision for him to make. He then had the option of instructing another advising firm if he wished to pursue the matter without paying SJP's fees. But he chose not to do so at that time. If those decisions then led to Mr J not

being able to do what he wanted in terms of his mortgage, it wouldn't be fair for me to say that SJP should now meet the losses that followed.

Should SJP have told Mr J that it would likely withdraw its Additional Advice Charge in future?

Mr J has suggested that it was unfair of SJP not to have told him of the impending withdrawal of the Additional Advice Charge once the Consumer Duty was in force in July 2023. Or he at least seems to think that it could have said it wouldn't apply the charge in February 2023 given that the fee was likely to have been withdrawn a few months later. Again, I've thought carefully about Mr J's position. But for the reasons I'll outline, I don't think SJP has acted unfairly or unreasonably here.

The Consumer Duty is a new standard for firms which was introduced by the Financial Conduct Authority (FCA). It sets a higher standard for firms in terms of their treatment of customers, and it applies to events from 31 July 2023. What Mr J is unhappy with, happened before 31 July 2023, so the duty wouldn't apply as it's not retrospective. And, whilst it's fair to say that SJP would have had some awareness of the impending duty and what that might mean for advisers like itself, it says it didn't know in advance that the Additional Advice Charge would be removed. On balance, that response doesn't seem unreasonable to me, not least because Mr J was thinking about benefit crystallisation at least five months ahead of the Consumer Duty being implemented. And I imagine some of the practical implications of that were still being worked through.

But even if it had known about the impending removal of the Additional Advice Charge, there was no requirement for it to give advance notice of that or to act as though that change had already happened. Further, even if SJP had known the Additional Advice Charge would be removed and had passed that information on to Mr J, I can't see that he was in any worse position. In those circumstances, he'd presumably have waited until the Additional Advice Charge was no longer in force and would likely still have incurred the additional mortgage interest and other associated losses he's complained about. Again, I don't think SJP did anything wrong here.

Did SJP communicate with Mr J in a way that was clear; fair and not misleading?

It's apparent from the evidence I've seen that the question of SJP's fees seems to have been something of a thorny issue from at least 2022. I say that because following some sort of discussion around that time, SJP apparently told Mr J that it wasn't willing to reduce its fees to the levels he was more comfortable with. And it's told him on more than one occasion that he may wish to shop around to gauge what other adviser firms charged.

I accept Mr J was free to take his business elsewhere if he'd wanted. But that doesn't mean that SJP isn't still required to communicate in a way that is clear; fair and not misleading – especially in relation to any discretionary decisions it takes. And it should still try to address any questions in a reasonable way to help the customer's understanding.

Based on all of the evidence I've seen, again, as I touched on earlier, I don't think that SJP's record keeping and communication has always been as clear or as helpful as it could have been. And it seems to me that, this in part, has led to Mr J's concern about a lack of transparency. It's clearly caused him frustration too. I'll illustrate this point further.

SJP made a concession in 2020 not to apply an Additional Advice Charge. Whilst apparently done as a gesture of goodwill (which seems a reasonable action to take) it hasn't recorded anything in its documentation. SJP has since accepted that the evidence doesn't specifically

refer to the waiving of the charge but told Mr J it does “*evidence its existence*”. However, it said it’s likely some form of discussion took place with Mr J at the time. It’s notable that Mr J has no recollection of that and feels that SJP’s position is “*unsound*”. SJP’s since told the Financial Ombudsman Service that, in any event, it’s not required to record charges that it *hasn’t* applied.

I think SJP is missing the point somewhat here. It appears that Mr J’s concerns aren’t about the *existence* of the Additional Advice Charge per se. It seems to me that he was trying to understand the *justification* for attempting to apply the charge in 2023 – when it hadn’t done so in similar circumstances a few years earlier. And it seems to me that some of this stems from the lack of clear documentation and discussion relating to the decision SJP took in 2020 to waive charges. Regardless of whether SJP was required to document if it had applied charges or not, as a matter of good practice, I think it would have been helpful to see a record of what was discussed with Mr J (if anything). There would then have been a clear record of how – if indeed it had done so – it had managed Mr J’s expectations about the basis upon which SJP was making a concession to his charges. I can see that Mr J’s point goes even further when he said that if a discussion took place with him, SJP had a duty to “*make full and frank disclosure and clearly document that you have done so*”. I think Mr J makes a valid point.

Based on the lack of documentation and Mr J’s recollections, on balance, I can’t fairly say that a conversation took place with Mr J in 2020. Given that, I can fully appreciate his surprise and concern – regardless that SJP’s terms and conditions allowed it to apply an Additional Advice Charge – when SJP said it intended to apply a 2% charge to Mr J’s account. SJP initially said that charge equated to £8,400, but when it produced a suitability report, it said it intended to charge £4,166 as a concession to Mr J. Again, I’ve seen no persuasive evidence to show any discussion took place about the decision to make a concession here.

Perhaps not surprisingly, this prompted further comments and questions from Mr J. He said he was confused about what the charge represented and why it was a percentage of the funds crystallised. He also mentioned that a different amount of £4,166 was quoted and asked why it didn’t come under the “*normal advice fees*”. Again, whilst I can see that SJP attempted to address some of this in its responses – such as referring to the terms and conditions allowing an Additional Advice Charge to be applied, I’m not persuaded that it really got to the heart of Mr J’s concerns – which seemed to be the justification for the charge, rather than questioning its existence. And I think SJP could perhaps have given Mr J a further explanation about why the work didn’t fall within the definition of ‘ongoing advice’ given the additional comments he made.

I should say that I wouldn’t necessarily expect a business like SJP to justify its charges in the way that Mr J seems to be suggesting to the Financial Ombudsman Service. He’s made comments along the lines that he doesn’t think the amount of work that SJP needed to do was at the level to justify the Additional Advice Charge. It seems unlikely he was ever going to get the kind of costs breakdown he was perhaps expecting – in the way – for example – that perhaps a legal, accountancy or other professional might outline their charges. And I have to keep in mind again that Mr J was free to take his business elsewhere if he wanted to. But I think it’s still reasonable to expect a business to give a customer as full and helpful a response as possible to allow them to make an informed decision. Even if that decision is then to approach another advice firm.

Based on everything I’ve seen, I’m not persuaded that SJP always addressed Mr J’s concerns as helpfully as it could have done – if only to tell him that it wouldn’t/couldn’t give

him the level of detail he was perhaps expecting. And I think that clearly contributed to Mr J's feeling that SJP's charges were excessive and lacked transparency. And again, it undoubtedly heightened his frustration.

Finally, Mr J says SJP gave him "*erroneous*" relating to pension transfers. First, nothing I've seen causes me to think that SJP was attempting to give Mr J pension transfer 'advice' or that he should have construed it as such. Given his discontent, I think it was simply trying to explain the likelihood of there being fees payable or other requirements to fulfil with whichever adviser/provider he engaged with. In general terms, I agree with that position.

Potentially switching providers was something that Mr J had mentioned before. And I've seen other correspondence where SJP suggested he'd need to do his own research if he was intent on doing so. It seems to me that information would equally apply here. So, it's reasonable to assume that regardless of what SJP said, Mr J would have known to confirm the position with other providers for himself.

In any event, I've seen no other persuasive evidence to suggest that Mr J was *definitely* minded to transfer his pension, although it's evident he was thinking about other options. Or even if he was, that he decided on a different course of action on the strength of the information SJP gave him. Although Mr J did tell SJP around March 2023 that he was in discussion with other companies, it's not clear what the outcome of those discussions was. It seems reasonable to assume other providers would have discussed things with Mr J. Specifically, that there was no requirement to take advice because there were no safeguarded benefits involved and they'd likely have explained any other requirements relevant to the individual companies.

In short, I agree that what the adviser said was inaccurate. But I'm not persuaded that the miscommunication had a knock on effect in terms of any decision Mr J made (or not) to transfer his pension. SJP initially suggested that Mr J may have misunderstood the adviser's message about when advice needed to be sought on a pension transfer. But it does now accept that the communication was misleading – as advice is only needed when the value is over £30,000 and there are safeguarded benefits involved. That wasn't the case here.

I can appreciate that this likely added to any frustration Mr J already felt from SJP's communication. Taking account of everything I've said here about where SJP's record keeping and communication could have been clearer, I'm directing SJP to pay Mr J £200 compensation to recognise the impact that had.

Has SJP done enough to recognise the impact of its other service issues?

Another of Mr J's concerns relates to the level of service he received from SJP around the time of his previous adviser's retirement. I'm inclined to agree with our Investigator here in saying that there's no suggestion of a significant delay between the appointment of advisers. And it seems that Mr J still had access to other advisers in the event of urgent queries. However, I do appreciate Mr J's frustration when he wasn't contacted by the new adviser when promised – especially when it seems he'd taken proactive steps to ensure that the handover between advisers was a seamless one. And I can see why he thinks that level of service isn't reflective of the fees he was paying.

SJP acknowledges that its standard of service fell short here and made an offer of £150 compensation to recognise the impact of this and other service issues. I've thought very carefully about whether this payment goes far enough to recognise the impact of these particular issues on Mr J. And on balance, I'm satisfied it does. Any disappointment and frustration Mr J felt to do with the handover between advisers seemed to happen over a

relatively short period. And I accept that he'd still have had access to an adviser if he'd needed one. In these particular circumstances, I'm satisfied that SJP's compensation payment of £150 is fair. If it has not already paid this, it should add it to the compensation I've directed below.

Putting things right

It now remains for SJP to pay the additional compensation payment of £200 that I've directed. If SJP hasn't already paid the £150 it offered, it should do so now (making a total compensation payment of £350).

My final decision

I partially uphold this complaint and I direct St James's Place Wealth Management Plc to pay the additional compensation payment of £200 (and the additional £150 it offered if it hasn't already done so) that I've referred to above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 12 December 2024.

Amanda Scott
Ombudsman