DRN-4908334

The complaint

Mr A complains that St. James's Place Wealth Management Plc (SJP) gave him unsuitable advice to switch an existing personal pension into an SJP Retirement Account

What happened

Our investigator set out the background to this complaint in his assessment. As this is not in dispute, I've included a slightly adapted version of this below setting out the context to this complaint.

In November 2015 Mr A met with an adviser from SJP to discuss transferring his existing Standard Life pension into his existing SJP Retirement Account. A fact find was completed at the time that noted the following about Mr A.

- He was aged 54 and cohabiting with his partner, they were unmarried.
- He wasn't currently in employment.
- He had two children aged 9 and 6 both of whom were financially dependent.
- His investment income was £19,500 per annum (50%) from the rent on their jointly owned London flat which had an outstanding interest only mortgage of £250,000. The total equity over and above the mortgage was in excess of £1,000,000.
- In addition, their residential property was valued at £450,000 unencumbered.
- He had a Standard Life Stakeholder Pension Plan valued at £171,382 which he joined in 2003 & a SJP Retirement Plan valued at £164,259 which started in 1995.
- Cash savings were recorded as £28,000.
- He had a "Medium" attitude to investment risk for his pension funds.
- Stated retirement age was 60.
- His joint income exceeded his outgoings.

Referring to the Fact find, Mr A's retirement priorities were to combine his pensions to make them easier to manage and have the potential to maximise returns as much as possible within his agreed attitude to risk and reward. It said Mr A was under no pressure to return to employment. Income from the rental property and his partners income was more than sufficient so he felt he would only return to work if the job was something he really wanted to do.

His investment experience was described as having "some experience" as he was already invested with SJP in a diversified portfolio aligned with a medium risk profile. But he had no interest or skill in managing investments himself. His Standard Life pension had been provided by his previous employer.

On 3 June 2016 a report was produced based on the fact find which detailed SJP's recommendations. It was supported by a personalised illustration as well as a Key Features booklet. The report detailed Mr A's existing pension arrangement as a Standard Life Personal Pension Plan.

It recorded the following about the plan

- It had a fund value and transfer value of £171,382.17
- It had no guarantees attached
- It had an annual management charge of 1% of the fund value les 0.2% discount
- Additional member and paid-up charges of around £43 per annum applied
- Selected retirement age was 60
- It was invested in a Managed Fund and Stakeholder with Profits fund.

It also recorded Mr A's objectives as

- You plan to retire at age 60 and are looking for fund growth between now and when you want to take your pension.
- You do not have a specific income in mind for your retirement, but you are looking for your accumulated fund to work as hard as possible for you.
- You would like, if possible, to consolidate your plans for ease of management and to give a clear line of sight of your pension fund and its performance.
- You would like to be more involved in the process to ensure that your pension fund is invested in a manner that offers you as much growth potential as possible, at a risk level that you are comfortable with.
- As an existing SJP, you believe that you would benefit from a coordinated proactive approach to investment management, in particular you wish to benefit from the distinct SJP approach to investment management and the independent fund manager monitoring across all of your pension funds.
- You want peace of mind that you can call upon me for guidance and advice on your pension and the complex pension rules that exist in the UK.

Mr A's existing Standard Life pension provided annual statements and Mr A's adviser noted that whilst generically she could discuss the funds he was in and potential other available funds from the Standard Life range, she could not provide advice and recommendations. It was also pointed out that the rules with Stakeholder Plans meant that any ongoing adviser charges could not come from the pension so would need to be paid separately.

The report explained Mr A had been provided with a brochure which explained the SJP approach to investment and how it differed from other organisations.

The recommendation to move his Standard Life pension to his existing SJP pension was explained as a suitable way to achieve the benefits of ongoing advice, consolidate his pensions in one place and agreed direction and by utilising the SJP investment approach have the potential for growth in line with his agreed attitude to risk and reward.

In respect of ongoing contributions, it noted Mr A currently didn't have access to an employer scheme and a stakeholder pension scheme was discounted as it wouldn't allow for payment of SJP's charges from the fund.

The report explained there were no charges for exiting his Standard Life plan however the following was noted:

> *'the additional annual growth required by St James's Place to your preferred retirement age of 60, in order to match your existing fund with SL is 1.09% pa. Due to the charges on your plan with Standard Life the additional growth required on transfer to St. James's Place is above the normal limit that I would recommend.*
>
> *However, I have arranged for special terms, reducing the initial advice charge payable, which brings the outperformance required to below that limit. After applying the special terms, the total annualised average additional costs of transferring to St. James's Place will be O.99% p.a.*
>
> *Putting this another way, this means that your St. James's Place Retirement Plan would have to grow by £1,693 more in the first year than your existing plan in total. As you are aware, there is no guarantee that this out-performance will occur.'*

The new plan had an annual management charge of 1.25% per annum and total external management charges between 0.11% and 0.95%. It had 34 funds to choose from in comparison to 40 with Standard Life and Standard Life had a maximum allowance for fund holdings of 12 as opposed to a limit of 20 with SJP.

Disadvantages of the recommendation were noted as the application of Early Withdrawal Charges (EWC) within 5 years, as well as higher annual charges.

Mr A signed a declaration accepting the advice on 15 June 2016.

On 1 November Mr A's professional representatives raised a complaint with SJP on his behalf. He complained that the advice he was given to switch his pension from Standard Life to SJP was unsuitable. He said the charges were opaque and he'd had to chase SJP for regular reviews of his pension.

Prior to the issue of the final response letter (as the permitted time to respond by had passed) Mr A referred his complaint to our Service on 26 March 2024.

SJP responded to the complaint by way of a final response letter issued 14 May 2024. In it SJP said that the advice it gave Mr A to switch his pension was suitable and it had evidence of the annual reviews that had been carried out with Mr A.

Our Investigator looked into things. Regarding ongoing advice, he said there was evidence of engagement between Mr A and SJP demonstrating regular consideration of the ongoing suitability of the recommendations it had made.

He went on to consider the suitability of SJP's advice to switch Mr A's pension in 2016. He concluded that there was sufficient rationale to recommend the switch as it provided ongoing advice, consolidation and active management that met Mr A's objectives.

Mr A didn't accept our investigator's opinion and asked for an ombudsman's decision.

I wrote to Mr A's representatives to ask why Mr A disagreed with our Investigator's view. Mr A explained that he was never happy with the opaque fees which weren't clearly explained. He went on to say the fact that he did not understand the charges and requested a breakdown of them means the advice was unsuitable.

As Mr A didn't accept our Investigator's view, the complaint has been passed to me for a 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 take into account relevant laws and regulations as well as the regulator's rules, guidance and standards. Where appropriate I also consider what was good industry practice at the time of the advice.

What the regulator had said

As a regulated firm, SJP had many rules and principles that it needed to adhere to when giving advice to Mr A. Many of these were found in the regulator's handbook under the Conduct of Business Sourcebook (COBS) and Principles for Businesses (PRIN). Over the years the regulator also provided guidance, which is intended to be read alongside the applicable rules.

The most relevant rules and guidance to this complaint are:

COBS 2.1.1 – A firm must act honestly, fairly and professionally in accordance with the best interest of its client.

COBS 9 – 'Suitability'

PRIN 2.1 (6) – A firm must pay due regard to the interests of its customer and treat them fairly.

PRIN 2.1 (7) - A firm must pay due regard to the information needs of its clients and communicate information to them in a way which is clear, fair and not misleading.

PRIN 2.1 (9) – A firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgement.

In 2009 the then regulator, the Financial Services Authority (FSA) published a report on the quality of advice on pension switching. The report identified four main areas where consumers had lost out:

- They had been switched to a pension that is more expensive than their existing one(s) or a stakeholder pension (because of exit penalties and/or initial costs and ongoing costs) without good reason
- They had lost benefits in the pension switch without good reason. This could include the loss of ongoing contributions from an employer, a guaranteed annuity rate (GAR) or the right to take benefits at an earlier than normal retirement age
- They had switched into a pension that does not match their recorded attitude to risk (ATR) and personal circumstances

- They had switched into a pension where there is a need for ongoing investment reviews but this was not explained, offered or put in place.

In 2012 the FSA produced finalised guidance – *'FG12-16 Assessing suitability: Replacement business and centralised investment propositions'*. The guidance pointed out several examples of good and poor practice that the regulator had seen in the replacement business cases it had reviewed.

Amongst other things, its key findings said:

> *Replacement business*
>
> *2.11 We continue to identify firms failing to consider the impact and suitability of additional charges when conducting replacement business. Several firms in our review failed to consider the costs and features of the existing investment, and were unable to quantify the additional charges associated with the new investment. In addition, several firms failed to provide a comparison of the costs of the existing investment and the new recommendation in a way the client was likely to understand.*
>
> *2.12 We saw examples of firms recommending switches based on improved performance prospects, but providing no supporting evidence to show that these performance prospects were likely to be achieved. While we acknowledge that firms cannot be precise about the potential for higher returns, where improved performance is an objective of the client, firms should clearly demonstrate why they expect improved performance to be more likely in the new investment.*
>
> *2.13 Firms often failed to collect adequate information on the existing investment or failed to consider the features and funds available within the existing solution. Firms should collect adequate information on the existing investment to demonstrate they have taken reasonable steps to ensure the suitability of their recommendation.*

In 2016 the FCA published guidance on its website for 'assessing suitability'. The guidance said that when undertaking replacement business, firms need to ensure they:

- *consider objectively your clients' needs and objectives*
- *collect necessary information on your clients' existing investments and the recommended new investments, such as the product features, tax status, costs and the performance of the underlying investments*
- *implement a robust risk-management system to mitigate the risk of unsuitable advice and poor client outcomes*

Although the guidance in 2016 may have only just been published during the advice SJP gave Mr A, it didn't mark a change to the rules SJP were already expected to follow. The essence of the guidance, in my view, was to remind firms like SJP of the standards that should already have been relevant when considering replacement business.

The 2016 update by the FCA also referred to the FSA's FG12-16 guidance. I therefore believe FG12-16 to have still been considered appropriate and relevant by the FCA.

Ongoing reviews

In his complaint Mr A said he had to chase SJP for reviews and they had a limited focus – for instance they were based around what else he could invest.

I’ve seen an email chain from October 2017, a year after the initial investment in which Mr A asked SJP if it was time for a review of his investments. In response SJP provided several dates of availability going into early 2018 and Mr A suggested a meeting date of 11 January 2018.

In its final response letter SJP say their records show that following the switch Mr A had several reviews before he transferred his business away in 2021.

I haven’t seen all of the communications between Mr A and SJP to comment on whether it was always Mr A who chased for the review, so the evidence here is not as complete as it could be.

But the communication I have seen from 2018 shows SJP were willing and able to carry out the review Mr A had paid for. And I can’t say with any certainty that SJP wouldn’t have offered the review even if Mr A hadn’t pointed out that it was due.

In response to our Investigator’s assessment, Mr A said his dispute was about the suitability of the advice he was given to switch to SJP from Standard Life. So, notwithstanding his point that he had to chase SJP for reviews, I’ve got to assume he’s content that the reviews were carried out. And it wouldn’t be fair to say SJP should refund the fees just because it was Mr A who had to ask for the review to be conducted. I also don’t find it unusual that SJP would suggest further investments to Mr A during the reviews, as that would be a consideration when thinking about his wider financial circumstances and preparations for retirement.

Did SJP follow the regulators rules and guidance for the pension switch?

When looking at whether SJP’s advice in 2016 was suitable I’ve considered Mr A’s recorded objectives at the time and looked at whether SJP’s advice met those objectives and was suitable for him based on his individual circumstances.

For ease, I’ve considered below a summary of Mr A’s broad objectives recorded at the time of the advice alongside some of the relevant considerations set out by the regulator.

Loss of guarantees

One thing the regulator warned against in replacement business was the loss of guarantees associated with the existing schemes.

I’ve seen nothing in the evidence provided that shows Mr A lost valuable guarantees as a result of the switch, which he could reasonably made use of. For example, there were no guaranteed annuity rates or enhanced tax-free cash entitlements attached to his Standard Life plan.

While it wasn’t a guarantee, Mr A had been invested in a with-profits fund which had aimed to smooth out fluctuations in the market. In the suitability report and documentation provided to Mr A at the time of the advice, SJP warned that the value of the funds may go down as well as up. It also included specific information about with-profit funds. So, I’m satisfied Mr A was aware that his pension funds remained at risk of fluctuating investment returns.

Consolidation of existing pensions

SJP identified that Mr A wanted to consolidate his pensions into one place. I think that was a reasonable objective to achieve for Mr A. He was approaching retirement age and having his pensions arranged in this way would afford him ease of monitoring and flexibility when it came to taking benefits.

Dealing with just one provider may have also meant it was easier for Mr A to ensure his pension funds were all invested in a way that matched his attitude to investment risk and remained balanced. So, I think recommending that all Mr A's existing pensions were brought into one plan was likely to be suitable for him.

Need for on-going advice

There can be several reasons why someone may wish to access ongoing advice. Mr A's circumstances in 2016 were that he was 54 and looking to retire in six years' time at age 60. As Mr A was almost at the age of 55, he was soon able to start accessing his pension benefits if he needed to.

At the time Mr A was unemployed and while his income needs were being met through his rental income, it's possible he might have needed to start accessing some of his pension if any unexpected expenses arose.

While Mr A has mentioned the early withdrawal charge (EWC) associated with these funds, the EWC wouldn't have applied to the existing funds in the pension. Mr A had around £160,000 of existing funds with SJP which could have been accessed free from EWCs if needed. And I've seen no evidence that Mr A intended to, or was likely to, access his entire pension fund before the EWCs applying to this proportion of his funds would apply.

In my view it's not unusual for someone approaching retirement to start paying closer attention to their pensions, how they are performing, and start seeking advice on how best they access them.

Generally, the closer someone is to retirement the more decisions need to be made about how the pensions will be used to fund income in retirement. So, I don't find it unusual that Mr A would also have a genuine objective to access on-going financial advice as he approached retirement age.

There is, of course, usually an additional cost to receiving on-going advice. So, I'd expect a firm to clearly demonstrate to its client how the benefits of receiving on-going advice outweigh the costs.

Mr A was likely to benefit from receiving on-going advice in his circumstances. I say that because it was likely to lower the burden on him of having to monitor the fund's performance and make changes to it as he approached retirement. It also gave him access to a professional adviser to ensure his funds produced an income in retirement that not only covered his needs but also advised on how to make his funds last over his lifetime.

In the suitability report the cost of on-going advice wasn't specifically separated out from the overall costs of the plan. SJP looked at the critical yield required to outperform Mr A's existing schemes. That included looking at the annual costs of those schemes and any exit penalties and comparing that to the on-going costs of SJP's Retirement Plan which included fees for on-going advice. That showed, applying a special rate to Mr A's plan, that the SJP Retirement Plan was 0.99% more expensive than the combination of his existing plans.

Mr A said the charges were opaque, which he says is what made the advice unsuitable, but I disagree. I say that because the additional costs of moving to SJP were set out in a clear way which included both a percentage and monetary figure for the first year. So, it ought to have been clear to Mr A that the SJP plan was more expensive than his existing scheme.

The illustration also showed the charges of the individual funds; the annual management and ongoing advice charges; as well as the applicable early withdrawal charges. These were shown as both percentages and monetary figures in places.

It isn't good enough for SJP to simply set out the charges, it needed to demonstrate not only the additional benefit and cost of on-going advice but how the recommendation was suitable overall despite the additional cost. And it needed to show the likelihood of how accessing on-going advice, and other benefits, would outweigh the increased cost. I'll cover this in more detail below.

Access to SJP's investment approach and the potential for superior performance

In its report SJP said that, by switching, Mr A would have access to its investment managers who are proactively monitored by an independent party – leading to potentially better performance.

In its suitability report SJP said:

'I feel the prospect of your money being managed by handpicked investment professionals chosen on merits and 'best of breed approach' adopted by St James's Place will offer your pension investment better growth potential than your existing scheme.'

SJP's comments here would have, I think, given Mr A the belief that SJP thought his pension would see higher growth with SJP than his existing scheme.

The FSA's guidance from 2012 explained that firms needed to demonstrate '*when improved performance prospects are a driving factor for the recommendation, it is clear why the new investment is, in the firm's opinion, likely to out-perform the existing investment*'.

So, I would expect to see SJP's suitability report explaining why it thought its approach would produce better returns. I say that because SJP needed to have a reasonable basis on which it could claim it was likely to deliver better returns.

In the FSA's guidance it gave an example of a firm's poor practice where *'… there was no evidence that it considered and compared the options and performance of each client's existing investment with the recommended CIP solution.*'

If SJP alluded to superior performance of their recommended product, as it did in this case, it needed to have some reasonable basis for believing it would outperform the previous funds. One way in which it may have done so was to compare the performance of the existing scheme with its own.

SJP have given us a copy of an email it sent to Mr A on 15 March 2016. The email contained a graph on the historic performance of the Standard Life managed fund compared with the SJP managed fund it was recommending. Amongst other things the adviser wrote:

> *'The attached chart shows performance after annual management charges between your Standard Life fund (Managed Fund - the With Profits isn't shown on our system due to the different way returns are calculated on With Profits Funds) and our Managed Portfolio. Comparing those two, you will see 6% outperformance from SJP over the 5 year period. Doing some back of the envelope calculations, that would have translated to £7,842 more after all fund charges. After adding in our ongoing advice fees (which hopefully add more value over the long term than purely performance), you would have been £5,961 better off despite our costs being higher.'*

Mr A also provided a copy of the graph which showed the SJP fund outperforming the Standard Life fund over the previous five years. Mr A said the graph has no relevance to this complaint as he felt SJP ought to have produced a graph showing how his funds have performed up until now against the Standard Life funds, but I disagree. I say that because my decision on the suitability of the recommendation is based on what SJP knew at the time, which couldn't have included the future growth of both funds.

Whilst past performance is no guarantee of future returns, SJP had done some analysis of the historic performance to give them a basis for believing there was a potential for the switch to mean Mr A would see improved performance. I think that's in line with the regulator's expectations as I've noted above.

Although the with profits fund wasn't included in the analysis, SJP did point that out to Mr A so he was in an informed position.

I've also considered that Mr A wasn't going into the SJP pension blindly. He'd held a pension with it since 1995. I think it's unlikely he would have asked SJP for advice, knowing it was tied to its own products, unless he'd been broadly happy with SJP's service and performance up until that point.

Alternatives discussed.

While considering whether a switch to SJP met Mr A's objectives, SJP also thought about alternatives.

In its suitability report SJP considered whether Mr A ought to leave his pensions where they were. And possibly switch funds within his current plans – which would avoid the higher charges associated with moving to SJP's Retirement Plan.

It said SJP had discussed that option with Mr A but, in the suitability report said, *"…I did not recommend that you leave your plan where it is now because it is* [sic] *will not address the underlying issues you have with your existing provider in that you have not received any advice within the last few years. You feel you need ongoing face to face advice and regular reviews to ensure that your plan remains appropriate to your circumstances from now until you retire.*'

Looking at the information provided to Mr A at the point of sale, I'm satisfied Mr A ought to have been aware of the limitations of SJP's advice – being restricted to its own products and funds. So, I think he was aware that he could seek independent advice elsewhere which could review his Standard Life plan. But it's fair to point out that any advice on the existing schemes would also come at a cost to Mr A.

I think SJP's advice met many of Mr A's objectives, the limitations of SJP's advice were explained, and he was happy to proceed with the switch to SJP on that basis.

Risk of the investments

The regulator doesn't prescribe specific ways in which businesses must assess their client's attitude to investment risk. It just needs systems in place to ensure it truly understands its client's attitude to investment risk and capacity to tolerate losses.

In SJP's case, it explained in the suitability report that it had discussed Mr A's attitude to investment risk and capacity for loss in conjunction with its guide to '*understanding the balance between risk and reward*'.

It's recorded that Mr A and SJP discussed different types of investments, the time horizon of the investment, its affordability, and Mr A's capacity for loss. Following that discussion SJP say Mr A confirmed he was a Medium Risk investor.

I wasn't present at the meeting between Mr A and SJP, so I can't know for certain how the different risk categories were presented and discussed. It's part of Mr A's complaint that SJP didn't demonstrate they'd undertaken an adequate assessment of his expertise, experience and knowledge of investing.

I therefore thought about whether Mr A's attitude to investment risk was measured correctly by SJP. At the time of the advice, it was recorded that Mr A didn't intend on retiring for 6 years, so he was investing for at least the medium term. He also had savings to rely on, some disposable income, an unincumbered property and a large amount of equity in a rental property. So, I think it's fair to say he had some capacity to tolerate losses.

From Mr A's recorded objectives, I also think it's fair to say Mr A was keen to ensure his pension funds saw returns in the market. There's no suggestion he was content with his level of funds and seeking to protect them with no risk.

SJP described Mr A's attitude to risk in the suitability report. It explained;

"*You want your capital to keep pace with inflation and are investing for at least five years. You are comfortable with most of your capital being invested in equities and property, some of it overseas. You realise that there may be significant falls in the value of your investments, and accepting this risk gives you the potential to achieve better long-term returns."*

This description seems to align with Mr A's circumstances and objectives at the time of the advice. Therefore, I'm satisfied that SJP accurately assessed Mr A as a Medium Risk investor.

SJP recommended its managed funds portfolio which had an overall risk rating of medium. So, I'm also satisfied SJP recommended a portfolio which was in line with Mr A's recorded attitude to risk.

Summary

The regulator has said that where the recommendation is to move into a more expensive product, there needs to be good reason to do so, and the reasons need to be explained to the client.

For the reasons I've given above, I think SJP explained how the benefits of the switch outweighed the costs. And it had evidence upon which to suggest its product may outperform the existing schemes.

The evidence available to me shows that Mr A's objectives were met by switching to SJP. He was approaching retirement age, so the benefits of on-going advice and better performance prospects are likely to have outweighed the additional 0.99% in costs.

Mr A was an existing client of SJP and so had 'lived' experience of the service and performance SJP offered. I'm satisfied he made his decision to accept the recommendation from an informed position.

Furthermore, I'm satisfied that SJP fairly assessed Mr A's attitude to investment risk and capacity for loss and recommended an investment that aligned with it.

My final decision

For the reasons I've explained, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 20 June 2025.

Timothy Wilkes
Ombudsman