

## The complaint

Ms P complains that her residential mortgage was mis-sold by St. James's Place Wealth Management Plc (SJP) as it was not suitable for her needs.

## What happened

Ms P has been a longstanding customer of SJP in relation to various financial matters, including her residential mortgage.

Ms P's existing mortgage deal was due to expire on 31 January 2021. She contacted her financial adviser at SJP on 15 June 2020 to let him know that she was planning to retire the following year due to health reasons. Following this, Ms P says that she spoke with the adviser on the phone and informed him that she would be downsizing her property and wanted to raise some equity from this after she had retired. She says that it was therefore critical that the new mortgage would need to be able to be ported to a new property and would not require her to have an income. This was as she would be retired by this point and living off of her savings and cash reserves rather than taking a draw down pension, which had been at the adviser's recommendation.

SJP's mortgage adviser (who was different to Ms P's regular financial adviser who she had contacted above) recommended a mortgage with Lender A, which Ms P says appeared to meet all of her criteria. This was an interest-only fixed rate mortgage for five years with the ability to port to a new property. It also allowed Ms P to borrow around £140,000 more than her existing mortgage so the new mortgage was for around £300,000.

Ms P received an email from SJP on 8 December 2020 saying that it had completed her application for the mortgage with Lender A. On the same date, she received an email from Lender A saying that it had received her mortgage application. A mortgage offer was received from Lender A on 2 March 2021 and the mortgage was completed later that month.

Due to delays on the part of Lender A, Ms P moved her existing mortgage onto a different rate for a short period, until the mortgage with Lender A was completed on 8 March 2021. This cost her a fee of £299.

Ms P retired on 31 July 2021. She put her house on the market in June 2022 and accepted an offer shortly thereafter and also found another property she wished to purchase. Ms P advised SJP of this in July 2022 so that arrangements could be made with Lender A to port the mortgage to the new property. She was then advised by SJP that Lender A had now said that it would not port the mortgage without imposing the condition that she needed to draw down her pension so that she had an income. This is because without an income she wouldn't pass the affordability assessment Lender A would carry out before agreeing to port her mortgage. Drawing down her pension was not something Ms P wanted to do as part of her financial planning.

On 22 July 2022, Ms P suggested to the adviser that if Lender A was being difficult then it might be better to pay the early repayment charge (ERC) to Lender A and move to a different lender who would be able to complete on the mortgage within the next eight weeks. However, the adviser felt that it would be possible to get Lender A to change its mind and SJP attempted to negotiate with Lender A throughout July and August. Ms P says that Lender A did make an offer for her to port £222,000, however it still required her to draw down her pension so this did not meet Ms P's needs.

At this stage, as Ms P's property sale and purchase got closer and she was in danger of losing the buyer for her property, she instructed SJP to find an alternative lender. She was offered a mortgage of £300,000 with Lender B on 25 August 2022 which did not require her to draw down her pension.

Ms P says that when she took the mortgage out with Lender A, it was clear to SJP that the mortgage would need to be portable and that she would not have an income at the time she came to port. Therefore, she says that SJP should have ensured that this was the case before recommending the mortgage with Lender A to her. Because she could only port subject to conditions she wouldn't be able to meet, Lender A's mortgage wasn't suitable for her and SJP should have known this at the time of the recommendation.

Ms P says that as a result of Lender A not being able to port the mortgage unless she drew down her pension, she was forced to take a mortgage out with Lender B, at a much higher interest rate, which met all the criteria she had set out to SJP in December 2020.

Ms P says that she has lost a lot of money due to the mortgage being mis-sold as this has meant that she had to pay an ERC to Lender A of over £15,000. It also meant that she had to pay a higher interest rate with Lender B which was an additional £35,000 over the five-year term. She has also suffered stress and frustration as she risked losing her buyer in an uncertain market. Ms P would also like to be compensated for the undue stress, anxiety and tension caused by SJP's incorrect advice and the substantial number of hours she has spent preparing her complaint, as well as her financial loss.

SJP says that its mortgage adviser has said that there was no indication that Ms P was planning to retire before 70 and no indication that she was planning to downsize. It says that the regular financial adviser was not involved in the meetings with the mortgage adviser, who was responsible for carrying out an assessment of her needs and circumstances.

SJP says that a correct recommendation to apply for the mortgage with Lender A was made based on the information available to the mortgage adviser and contained within the Confidential Financial Review (CFR) and Suitability Letter (SL) prepared by her. It says that the mortgage with Lender A was portable but its criteria required Ms P to prove affordability before this could happen. As Ms P's circumstances had changed and she retired before the mortgage could be ported, this meant that Lender A refused to port as it required a history of regular income and Ms P did not have this. Although Ms P had to pay the ERC with Lender A, SJP says that this was not something which the mortgage adviser had an indication was likely from the information provided to her at the time of the advice. Therefore, SJP did not uphold this aspect of Ms P's complaint.

SJP said that the financial adviser tried to get Lender A to port the mortgage to avoid Ms P having to pay the ERC. Although it says that this was done with the best intentions, SJP accepted that interest rates were fluctuating whilst negotiations were ongoing and Ms P was put in a stressful situation due to the potential impact on her house move. And the attempts delayed the eventual application to Lender B. Therefore, SJP agreed that Ms P may have lost out financially due to this delay and offered to put her back in the position she would have been in had the decision been made to pay the ERC and switch mortgage providers as soon as the financial adviser had become aware on 13 July 2022 that Lender A required her to show proof of income to allow the port.

The difference in the available interest rate with Lender B was £50 a month comparing the rates available on 13 July 2022 and on 25 August 2022 when the mortgage with Lender B was eventually arranged. Therefore, SJP offered to pay Ms P £3,000 plus interest to reflect the increased payments caused by the delay over the five-year term. It also paid Ms P £300 in respect of the distress and inconvenience caused as a result of Ms P having to bring the matter to its attention and a further £100 as a result of the delay in responding to her complaint. The total offer made was therefore £3,405.51.

Ms P says that in responding to her complaint, SJP has relied heavily on the SL and the CFR documents, neither of which she had seen previously. Having subsequently received copies, Ms P says that the CFR contained numerous significant errors in describing her personal circumstances which did not reflect her situation. She says that she didn't receive a copy of the SL and this was dated 9 March 2021 in any event, which was the day after she completed her mortgage – so she would have had no opportunity to correct anything in it.

Ms P also says that she did not receive a copy of the mortgage application form. Having now received a copy, she says that the mortgage objectives section contains a large number of errors. She says that as the information in the CFR was wrong, the mortgage offer procured on her behalf was not suitable for her situation. Further, had she received the SL prior to the mortgage application being submitted, then she would have had the chance to correct this and been offered the right mortgage.

Overall, Ms P says that SJP failed to take her needs into account when recommending the mortgage with Lender A, specifically the need to be able to port the mortgage and any future affordability criteria. She says that there was nothing in the offer from Lender A setting out that there was a requirement to have 'income' to qualify but she would have expected SJP to have known about the likely conditions and advised her accordingly.

Our Investigator looked into Ms P's complaint and didn't think SJP needed to take any further action. He agreed that the CFR and SL prepared by SJP didn't reflect Ms P's circumstances. However, regardless of this, he didn't agree that the offer from Lender A was unsuitable. Ms P wanted a five-year fixed rate on an interest-only basis with equity released from the property and the ability to port the mortgage to a new property. Lender A's offer fitted all of these criteria, including the ability to port the mortgage subject to its lending criteria.

The Investigator's view was that he wouldn't expect SJP to be aware at the time of sale as to whether any subsequent porting application would be acceptable to Lender A. Lender A's decision not to proceed with the application to port without certain conditions being met was Lender A's decision and it was not reasonable to hold SJP responsible for this. Retirement was not a reason which would automatically prevent a borrower from porting their mortgage and Lender A was prepared to agree the application if certain criteria were met, but Ms P was not happy to proceed on this basis.

Overall, the Investigator did not agree that the mortgage SJP recommended was unsuitable and found that it met Ms P's objectives. He thought that SJP's offer to resolve the complaint with compensation totalling £3,405.51 was fair and reasonable in the circumstances. In respect of the application to port itself, the Investigator suggested that Ms P may wish to discuss this with Lender A.

Ms P disagreed with this so the case came to me to make a decision. She says that she made it clear to SJP that she intended to retire, to downsize her property and transfer her mortgage to a smaller property and to live for some time on her cash reserves rather than drawing her pension. She says that SJP ought to have known that Lender A's rules would exclude her from porting her mortgage in future when she did not have an income.

I set out in my provisional decision dated 11 July 2024 (reproduced below) why I was minded to uphold the complaint and find that SJP had mis-sold the mortgage with Lender A to Ms P as it was not suitable for her. I also set out that I was minded to direct that SJP should put Ms P back in the position she would have been in had she taken out a mortgage with Lender B in the first place rather than Lender A.

I invited both parties to let me have any further comments and evidence by 8 August 2024. SJP responded to say that it had nothing further to add. Ms P made no further submissions.

## 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.

Having considered the responses to my provisional decision dated 11 July 2024, I remain of the view that SJP mis-sold the mortgage to Ms P and that this complaint should be upheld.

In my provisional decision I set out the following:

“Having looked at the evidence I disagree with the Investigator's view and I've explained my reasons further below.

When considering whether SJP mis-sold the mortgage to Ms P, I need to look at whether the advice given was appropriate for her, based on her individual needs and circumstances as they were at the time of the advice – including any known future needs. SJP should have asked for relevant information about Ms P's circumstances and objectives.

I have seen various email exchanges between Ms P and the financial adviser overseeing her affairs. In an email from Ms P on 15 June 2020, she sets out that she had made the decision to retire in either April or May 2021 and wanted to have a discussion with him about this. In particular, Ms P said that she wanted the adviser's opinion on equity release and whether this would be a good inheritance tax strategy for her.

Ms P says that she then had a discussion with the financial adviser on 18 June 2020 where she discussed her decision to retire and downsize her house afterwards. There is no recording of this call but Ms P has provided some handwritten notes she took of this conversation which mentions her switching to interest-only in January and moving the mortgage to a new property.

In an email from Ms P to the adviser on 7 November 2020, she set out that they had talked about moving to an interest-only mortgage and taking out some equity at the same time. The adviser responded on the same day saying that he would look at interest-only and capital raising and asked for Ms P to send over her last two years' tax calculations. An email from the adviser to Ms P on 30 November 2020 set out that to get more borrowing they would need a lender that would use Ms P's most recent salary and dividend figures as they were quite a bit higher than the previous year. The adviser said that Lender A would do this in order to raise the capital to £300,000.

Ms P responded on 1 December 2020, saying that she would be happy to raise that much capital. She also set out that they had discussed going for a five-year term rather than two as she was retiring next year and asked if Lender A did a five-year fixed rate.

Overall, I'm satisfied from these emails that Ms P made it clear to SJP that she was intending to retire the following year. She also set out that she wanted to release equity in the property and wanted an interest-only fixed rate mortgage for five years.

I haven't seen any contemporaneous evidence that Ms P told SJP about wanting to downsize and port the mortgage in future and SJP has confirmed that its calls are not recorded. However, I note the financial adviser's comments as part of SJP's investigation into Ms P's complaint where he states *“In our meetings [Ms P] did let me know that her intentions in the next few years would be to retire, downsize and probably keep the mortgage on as mortgage interest rates were low and investment returns good. I was aware of this but was not involved with the mortgage sourcing or*

*any of the mortgage advice*". So I think it's most likely that Ms P made SJP aware of this.

Whilst SJP has said that this particular financial adviser was not involved in the meetings with the mortgage adviser, I see no reason why Ms P would have provided different information to the mortgage adviser about her decision to retire, particularly given that this was the reason she initially contacted SJP in the first place in June 2020. And in any case, this was information in SJP's possession whether or not the first adviser passed it on to the second – and SJP's obligations are on it as a firm, not on the individual advisers.

Ms P has highlighted numerous errors in the CFR document prepared by the mortgage adviser at SJP. The SFR is undated but appears to have been prepared for the purposes of this mortgage recommendation. I can see from looking at this that there appear to be a number of obvious errors including that there were no known medical conditions when there had been a cancer diagnosis; that she did not wish to retire now and didn't plan to retire until at least 65 when she had indicated prior to this that she wanted to retire the following year; that the tax status wasn't expected to change in the near future when Ms P had indicated that she was shortly intending to retire; that her preferred retirement age was variously 70 and 65 throughout the form when in fact it was 61; and that there was no further advance when she had indicated that she wanted to borrow additional money (and did so). There was also a question "*If the term goes into retirement how will the mortgage payments be made*" and this was answered "n/a" when it clearly was applicable as Ms P had indicated that she was intending to retire the following year. There was no mention of downsizing and porting the mortgage in the CFL.

I have also considered the SL dated 9 March 2021. This sets out that Ms P's objectives are to get a new competitive fixed rate mortgage for five years. The letter also sets out that Ms P wanted to borrow an additional £140,000 to put towards the purchase of a new BTL property; Ms P says that this is incorrect in terms of the reason for the additional borrowing as she wanted this in order to live off of the equity from her house sale. The letter states that Ms P wanted to extend the term from seven to nine years in order to comfortably afford the repayments and that this term would mean that her mortgage would be repaid before her planned retirement age. Ms P says that this is also incorrect as – given that it was an interest only mortgage – the term would have no bearing on the monthly repayments. She had also made it clear that she was retiring the following year so the mortgage would run into her retirement. I note that – although SJP says that the SL was sent to Ms P – the letter appears to have been dated after the mortgage with Lender A was completed so it would have been impossible for Ms P to correct any errors by this stage.

In light of the above, I think there are issues with the accuracy and timeliness of the CFR and SL documents prepared in respect of Ms P's circumstances and this is clearly unsatisfactory. Therefore, I don't consider these to be a reliable source in terms of assessing what Ms P's needs and circumstances were at the time. I have therefore considered whether the mortgage would have been suitable for her based on what she says (and I accept) her objectives were, along with the information which I am satisfied that SJP was aware of at the time, rather than what has been recorded in the documents prepared by SJP.

Ms P has said in respect of this complaint that her objectives were that the mortgage was portable to another property, allowed for the release of equity, was interest-only and would allow for the mortgage to be paid from her cash reserves as she would not have an income when the mortgage was ported.

I can see from the mortgage offer from Lender A dated 23 February 2021 that this was interest-only on a fixed rate of 1.41% until 2 March 2026 and released around £140,000 of equity. The mortgage offer set out under section nine that *“You have the right to transfer this loan to another property. You must meet conditions set out in the mortgage conditions under ‘Transferring your loan to a new mortgage’. You must also meet our lending criteria and pass our affordability assessment at the time.”*

So I am satisfied that SJP recommended a mortgage which was interest-only on a five-year fixed rate, released equity and was portable to a new property, in line with Ms P’s requirements. The issue in this case centres around Lender A’s refusal to port the mortgage to a new property without evidence of income from Ms P and whether SJP ought to have known that this would preclude any future porting application from being successful.

As set out above, I am satisfied that SJP was aware of Ms P’s retirement and her strategy not to draw down her pension at this stage (meaning that she would have no income at the time of any porting application). So I’ve gone on to consider whether it ought to have recommended the mortgage with Lender A to her bearing this in mind.

I am satisfied that the offer document from Lender A made it clear that any porting application would be subject to an affordability assessment. Even if SJP wasn’t aware of this at the time it gave the advice, since I’ve found that this was central to Ms P’s objectives, I’d have expected SJP to have noted this and re-considered whether the mortgage was suitable for her in light of this information. While a lack of income wouldn’t inevitably have meant Ms P would fail any future affordability assessment (as it didn’t with Lender B), I’m aware that it’s relatively unusual for a lender to accept an application from a borrower with no income. So I think – acting fairly – SJP ought reasonably to have checked this with Lender A before allowing Ms P to proceed. Had it done so, it would have discovered Lender A would be unlikely to have allowed Ms P to port in her particular circumstances – and it would therefore have discovered that this mortgage didn’t allow her to meet her objectives and wasn’t suitable for her.

I note that in the financial adviser’s comments as part of the investigation into Ms P’s complaint, he states *“I am very aware (having dealt with mortgage lenders for over 20 years) that every lender that allows porting requires the applicant to prove affordability again at the time of porting”*.

I’ve also looked at the correspondence between Ms P and SJP. In an email from the financial adviser to Ms P (which is undated but appears to have been sent between 8 July 2022 and 13 July 2022), he states *“In order to port you have to meet affordability criteria. I am awaiting a call back from [Lender A] that your pension is a suitable source of income and meets their criteria. (We know it is but just need to check they are happy)”*.

I can see that the financial adviser sent Ms P an email on 13 July 2022 setting out what Lender A had said in relation to the porting and the ERC. He also states *“I have also been back and forth with them regarding proving affordability when porting. Because they are moving the lending to a new property they have to go through underwriting again meaning it has to meet their affordability criteria. When it comes to using pensions to confirm affordability I have explained to them that you have the capacity to draw down from your fund flexibly as and when needed but for now you have ample savings you can rely on first. They are sticking to their guns and saying that there has to be evidence of drawdown to meet criteria meaning that we will have to take a drawdown from your pension so for example set it up to pay you £5k a month and then they will accept it as suitable. Farcical I know [Ms P], as you don’t need the drawdown but that they say is the only way they will lend.”*

Ms P responded on 22 July 2022 to say that it “*seems ridiculous that a mortgage company can force me to take my pension when I don’t want to*” and asked what the implications were of drawing her pension so soon. She questioned how much she would have to take and whether the drawdown could be set up and then cancelled. She also suggested that maybe it was better to pay the ERC and move to a different lender and asked if there was one who could complete within an eight-week timeframe.

The financial adviser responded on the same day saying that he would get the mortgage team to confirm the amount Lender A would need to see to meet affordability and said that it was “*just looking for a credit on your account from [SJP] as your pension provider so we could simply make a lump sum withdrawal for a couple of months which demonstrates the drawdown for them*”.

The financial adviser then forwarded Lender A’s criteria regarding pensions and annuities which set out that it needed the latest monthly pension payslip. He stated “*Looking at this they will just need one month showing on the bank statement and a pension statement showing the withdrawal. Probably best to trigger it for 2 months in the hope that will be sufficient*”. Ms P asked how quickly this could be set up.

I can see that various people from SJP were involved in liaising with Lender A in an attempt to get it to allow the porting application. The financial adviser was also chasing colleagues in order to get an answer for Ms P. On 27 July 2022, the financial adviser told Ms P that he had just received a call from his colleague mortgage adviser and the case had been referred to a senior manager at Lender A. He chased this and another mortgage adviser replied to him on 29 July 2022 saying that the Head of Mortgages hadn’t heard anything yet and that “*We think there may be a work around (the National Acc Manager for [Lender A] is looking into it)*”.

In an email from the financial adviser to Ms P on 9 August 2022, he states “*I haven’t taken the drawdown any further as [Lender A] are still indicating that they would need to see 6 months history. It really is ridiculous.*”

Ms P asked what would happen if Lender A says no and the financial adviser responds stating “*I am desperately hoping that we don’t have to face that [Ms P]. Another lender will lend you the money based on your pension but it still means you pay the [Lender A] exit fee*”.

Ms P noted in email on 16 August 2022 that she was planning to exchange contracts on the new property on 2 September 2022 so needed to have an alternative option which didn’t involve Lender A. At this stage another mortgage adviser set out that there were a couple of lending options available and suggested that Lender B would lend around £500,000 based on her pension pot and that she would not be required to draw down any income.

I can also see that SJP’s investigation notes contain details of a call between the SJP’s complaint handler and its Head of Mortgages on 14 March 2023. The note sets out that Lender A initially declined the mortgage application on 28 July 2022 and the Head of Mortgages states “*but we kept on pushing them, told them she had assets in the background. They finally accepted because of the pushing from us, also we asked for a different underwriter, so they accepted but a lesser amount*”. The note also states that the Head of Mortgages felt that Lender A was not at fault and says “*they followed their procedure, they were unwilling to lend because the client retired and was not showing an income and this was the main problem and it is their criteria which they are within their rights to stick to.*”

In light of the above, it seems to me that SJP ought to have foreseen that Ms P’s lack of income could have been a bar to any future porting application being successful at the time it recommended the mortgage with Lender A. This is because the mortgage

offer from Lender A explicitly stated that any porting application would be subject to affordability – and the emails from SJP make it clear that it was aware that this was the case.

Whilst SJP was clearly of the view that the stance taken by Lender A at the time of the porting application was unreasonable and it was initially confident that it could get Lender A to change its mind, this appeared to be reliant on having to escalate the matter and appeal Lender A's initial decision to reject the porting application. I say this because the emails above refer to Lender A 'sticking to its guns' and there being a 'work around', along with the fact that SJP's Head of Mortgages was of the view that Lender A was within its rights to stick to its criteria in being unwilling to lend due to the lack of income. The financial adviser also discussed Ms P drawing down her pension for a short period to try and demonstrate that she had an income in order to meet Lender A's requirements, even though he acknowledged that she didn't want or need to do this.

So, whilst I think SJP was trying to act in Ms P's best interests by negotiating with Lender A after it declined the porting application, I think it could reasonably have concluded that affordability would have been a barrier to the application in the circumstances. And I disagree with the Investigator's view that he wouldn't have expected SJP to be aware at the time of sale as to whether any subsequent porting application would be acceptable to Lender A. Overall, I am satisfied that SJP ought to have been aware that Lender A was unlikely to allow Ms P to port the mortgage if she was retired and had no income. Therefore, I don't think the mortgage arranged by SJP met Ms P's requirements in this respect and I'm minded to find that it was not suitable for Ms P's needs and circumstances at the time.

I think that a suitable recommendation at the time would have been a mortgage which was interest-only on a five-year fixed rate, released equity and was portable to a new property on the basis that Ms P would have no income at the time of the porting application, rather than one which would require her to draw down her pension.

As set out in the emails referred to above, the financial adviser stated on 9 August 2022 that another lender would lend Ms P the money based on her pension and the mortgage adviser set out in her email of 16 August 2022 that Lender B would lend the amount Ms P wanted based on her pension pot without the need for her to draw down her income. I note that SJP has also set out in its final response letter that Lender B *"is one of a handful of providers who would provide an interest only mortgage based on your assets rather than regular income"*.

While, in fact, Lender A could have allowed Ms P to port without an affordability assessment – this is permitted as part of the rules of mortgage regulation – I think it ought to have been clear that it was not Lender A's policy to do so, and that ought to have formed part of SJP's consideration of whether the mortgage was suitable for her.

On this basis, I think that SJP ought to have recommended a mortgage from Lender B in the first place rather than Lender A as it would have allowed her to port the mortgage without proof of income. The mortgage with Lender B would have met all of Ms P's requirements at the outset and would have meant that she didn't have to change mortgage providers and incur additional costs both in terms of having to pay an ERC to Lender A and the increased interest rate by the time she took the mortgage with Lender B.

In light of this, I think that SJP should put Ms P back in the position she would have been in had she taken out a mortgage with Lender B in the first place rather than Lender A.

I can see from the mortgage adviser's research summary dated 8 December 2020 that the mortgage with Lender A was fixed at a rate of 1.41% until March 2026 with total fees of £1,224. The summary shows that a similar mortgage with Lender B was available with a fixed rate of 2.19% until April 2026 with total fees of £2,096. So I think that SJP ought to put Ms P in the position she would have been in had she taken out this mortgage to start with.

Ms P's existing mortgage was due to come to an end on 31 January 2021. Although the mortgage with Lender A was applied for on 8 December 2020, it didn't complete until 8 March 2021. Due to the delays on the part of Lender A, Ms P moved her existing mortgage onto a different rate for a short period to avoid falling onto the existing lender's standard variable rate, which cost her a fee of £299.

Whilst I can't say that SJP was responsible for the delay by Lender A, had it recommended the mortgage with Lender B in the first place – as I think it should have done – then I don't think that Ms P would have incurred this cost. I say this because when the mortgage application with Lender B was submitted on 25 August 2022 it completed on 16 September 2022. So I think that if the mortgage with Lender B had been applied for on 8 December 2020, it is most likely that it would have been in place by the time Ms P's existing mortgage came to an end on 31 January 2021. I also note that the financial adviser stated in an email to Ms P on 26 January 2021 that *"[Lender A] are notorious at the moment for providing the worst service possible from a lender, we have had other cases where it is like banging your head against a brick wall"*.

In light of this, I think it most likely that the mortgage with Lender B would have been in place when her existing mortgage expired so Ms P wouldn't have had to pay £299 to get a new rate with her existing lender. Therefore I think SJP should refund this fee to Ms P.

On this basis, I also think it is reasonable to assume that the mortgage with Lender B would have started on 1 February 2021. Therefore, SJP should calculate what Ms P would have paid for the fixed rate mortgage with Lender B up until April 2026 if the mortgage had started on 1 February 2021 (including any fees she would have paid when taking out the mortgage). The research summary above shows that this would have been on a rate of 2.19%.

It should then calculate what Ms P will now pay for her mortgage over the same period. This includes the new rate of 2.74% with her existing lender between 1 February 2021 and 8 March 2021, the mortgage with Lender A at a rate of 1.41% between 8 March 2021 and 16 September 2022 and the mortgage with Lender B at a rate of 3.75% between 16 September 2022 and April 2026 (including any fees she would have paid when taking out these mortgages). SJP should then pay Ms P the difference.

I won't be asking SJP to pay any interest on this figure as I consider that the benefit of receiving the future loss upfront offsets any detriment of the past loss not including interest. I also note that – for the period between 8 March 2021 and 16 September 2022 – the interest rate Ms P actually paid was lower than it would have been on the rate she would have got with Lender B. So, overall, I don't think it is appropriate to award interest on the difference.

Had SJP recommended the mortgage with Lender B at the outset – as I think it should have – then Ms P would not have had to pay the ERC and other costs to redeem the mortgage with Lender A and move to Lender B. Therefore, SJP should also refund the ERC and other fees to redeem the mortgage paid by Ms P to Lender A, which she states amounted to £15,424.95, along with interest.

In respect of the delay in the application to Lender B once it became apparent that Lender A would not agree to the porting application without Ms P drawing down her pension, SJP has offered to put Ms P back in the position she would have been in had this been done earlier (rather than after some weeks of attempting to negotiate with Lender A). It has therefore offered her £3,105.51 in respect of this part of her complaint (£3,100 in respect of the additional interest she paid due to the delay plus interest on this amount). Given that I am minded to uphold Ms P's complaint about the mis-sale and put her back in the position she would have been in had she taken out the mortgage with Lender B at the outset, the need for this redress no longer applies and it would be duplication to ask SJP to pay this amount in addition. If this has already been paid to Ms P, SJP can therefore deduct it from the redress amount I have recommended before making payment to Ms P

I have considered all of the factors in this case and the stress caused to Ms P when she was at risk of losing the buyer for her property due to the problems in trying to port her mortgage with Lender A and having to find a new lender. Had SJP recommended the mortgage with Lender B at the outset – as I think it should have in Ms P's circumstances – this would not have happened. I think that SJP's offer of £400 in respect of the distress and inconvenience caused to Ms P is fair and reasonable in all of the circumstances.”

As set out above, SJP responded to say that it had nothing further to add following my provisional decision. Ms P made no further submissions. As there have been no further representations, I see no reason to change my provisional view. And I am satisfied that SJP mis-sold the mortgage with Lender A to Ms P as it was not suitable for her.

### **Putting things right**

For the reasons I've explained above, I am satisfied that SJP mis-sold the mortgage with Lender A to Ms P as it was not suitable for her. I therefore direct that SJP should do the following to put things right:

- a) Calculate what Ms P would have paid for the fixed rate mortgage with Lender B (including any fees she would have paid when taking out the mortgage) from 1 February 2021 until April 2026.
- b) Calculate what Ms P will now pay for her mortgage from 1 February 2021 until April 2026 (including the new rate with her existing lender between 1 February 2021 and 8 March 2021, the mortgage with Lender A between 8 March 2021 and 16 September 2022 and the mortgage with Lender B between 16 September 2022 and April 2026 (including any fees she would have paid when taking out these mortgages). SJP should then pay Ms P the difference between this and a) above, offsetting any interest redress it may already have paid her.
- c) Pay Ms P the fees she paid to Lender A to redeem the mortgage in September 2022, including the ERC.
- d) Pay Ms P the fee she paid to her existing lender to move to a new rate in February 2021 (if this has not already been included in a) above).
- e) Pay Ms P 8%\* simple annual interest in respect of c) and d) above, calculated from the date the fees were paid until the date of settlement.
- f) Pay Ms P £400 in respect of the distress and inconvenience caused (if it hasn't already done so).

\* HM Revenue & Customs requires SJP to take off tax from this interest. SJP must give Ms P a certificate showing how much tax it's taken off if she asks for one.

## **My final decision**

For the reasons I've explained in my provisional decision and above, my decision is that I uphold this complaint against St. James's Place Wealth Management Plc and require it to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms P to accept or reject my decision before 6 September 2024.

Rachel Ellis  
**Ombudsman**