DRN-4999579

The complaint

Mr D complains that the advice he received from St. James's Place Wealth Management Plc ('SJP') to transfer two existing pension plans to SJP in 2012 and 2018 was unsuitable. He also complains that he's been paying an ongoing advice charge ('OAC') for a number of years despite having no review meetings. Mr M says he wants to put back in the position he would have been in but for the poor advice and he wants a refund of the OACs paid.

What happened

The following is a summary of the background and key events leading up to this complaint.

I understand that Mr M's relationship with SJP began in 2001 when he started a personal pension plan with a regular monthly contribution.

In June 2012, Mr M met with SJP because he wanted to discuss moving one of his existing personal pension plans held with another provider to SJP. SJP completed a fact-find document to record and update Mr D's personal details, circumstances, objectives and attitude to risk. The relevant key details recorded here are as follows:

- Mr D's preferred retirement age was 60 with an objective of maximising growth potential whilst his funds were invested.
- His attitude to risk was assessed as being 'Medium.'
- His assets were primarily his home and around £8,500 held in cash.
- The rationale for the transfer of his existing pension was to gain access to SJP's approach to investment management and to have face-to-face advice with regular reviews.

On 10 July 2012, SJP issued a suitability letter to Mr D setting out its recommendation that he transfer his pension, valued at around £18,400, to an SJP personal pension plan. In summary this said the following:

- The transfer met Mr D's objectives.
- The alternative of leaving his pension where it was had been considered but discounted because of Mr D's desire to have SJP's investment management and ongoing advice.
- The charges were higher on the SJP pension plan, which meant the plan would have to outperform Mr D's existing plan by 1% or £184.50 in the first year to match his existing benefits.
- There was no initial charge, but an exit penalty would apply if Mr D transferred his pension during the first six years – a sliding scale of 6% in the first year reducing by 1% a year thereafter.
- It confirmed Mr D's 'Medium' attitude to risk and recommended he invest in the Balanced Portfolio.

Mr D accepted the recommendation, and the transfer duly went ahead.

In January 2018, Mr D contacted SJP to discuss moving another of his existing pension plans to SJP and a meeting took place the following month.

SJP updated the fact-find document. The key details and updates are as follows:

- Mr D was 48 years old and in good health.
- Mr D's rationale for wanting to transfer this pension was the same as in 2012 – he wanted access to SJP's investment management and ongoing advice.
- His attitude to risk was at the higher end of 'Medium.'
- His preferred retirement age was now 66.
- He held four pensions in total – two personal pensions with SJP, a multi-employer defined contribution scheme (the plan under consideration) and a defined benefit employer scheme.

On 9 February 2018, SJP set out its recommendation that Mr D should transfer his existing pension, valued at around £33,800, to his SJP pension plan. The reasons for the recommendation were broadly the same as in 2012 – that is, it met Mr D's objectives and his rationale for wanting to transfer. It said that, following the impact of the difference in charges between the recommended plan and Mr D's existing arrangement, SJP had arranged special terms and reduced the initial charge payable. It said this meant the outperformance required to match Mr D's existing benefits was 0.99% or £344 in the first year. It said that this was discussed in detail, following which Mr D felt there was a reasonable opportunity for sufficient growth to be achieved and he was happy to accept the risk there might not be.

SJP recommended that Mr D invest in the Strategic Growth portfolio, which it said matched Mr D's attitude to risk and because Mr D wanted a higher percentage in international equities because of uncertainties around Brexit. The letter also confirmed that SJP would provide an ongoing advice service – the cost of which was 0.25% and was set out in the accompanying illustration document.

Mr D accepted the recommendation, and the transfer duly went ahead.

In January 2024, Mr D complained to SJP, using the services of a professional representative, about the suitability of the advice he received to transfer his pension in 2012 (a complaint about the 2018 transfer was subsequently added to the original complaint.) He said the advice was negligent and a result he'd lost out. He also complained that for a long period of time – about 10 to 15 years – he'd not had annual review meetings when he felt SJP should have kept in touch. He said over the last five years he'd had good contact from his account manager with regular updates and meetings – it was the period before that he was concern about.

Because SJP didn't issue its final response to the complaint in time, Mr D referred his complaint to us. One of our investigators considered the matter and they concluded the complaint should not be upheld. In summary they said the advice Mr D received in both 2012 and 2018 to transfer his existing pension plans to a SJP plan was suitable.

They said Mr D wasn't giving up any guarantees by transferring, his 'Medium' attitude to risk assessment was reasonable, the investment funds recommended were in line with his risk appetite, and his objectives and the rationale for the transfer were reasonable in the circumstances. They said that, while the costs were higher with the SJP plan, they didn't think this made the advice unsuitable, and SJP had clearly disclosed the costs and the implications to enable Mr D to make an informed decision.

In relation to the OAC part of the complaint, following receipt of further information from SJP, which was provided to Mr D, they explained that the transfer of Mr D's pension in 2012 happened before the Retail Distribution Review (RDR) which changed the rules about how advisers were paid. They said prior to the RDR, advisers were paid by commission by the product provider typically in two ways – initial commission typically based on a percentage of the amount invested, and trail or ongoing commission designed to pay the adviser for ongoing administrative services. But they said there was no commitment to provide an ongoing service, so Mr D wasn't entitled to one simply by the payment of trail commission. They said Mr D didn't pay a separate charge for ongoing advice at this time – the commission payments were effectively built into the cost or overall charges of the product payable by everyone.

They said post it was only post RDR, and so following the transfer of Mr D's pension in 2018, that he started paying a separate OAC to SJP. But they said Mr D had said he was happy with the service he'd received since then, so there was no refund of fees due.

Mr D, through his representative disagreed. He said he believed SJP had a duty to contact him during this period about how his investments were performing.

Because the investigator wasn't persuaded to change their opinion, the matter was 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.

I've taken into account relevant law and regulations, regulatory rules, guidance and standards, codes of practice, and (where appropriate) what I consider to have been good industry practice at the relevant time. And where the evidence is incomplete or inconclusive I've reached my decision based on the balance of probabilities – in other words, on what I think is more likely than not to have happened, given the available evidence and wider circumstances.

Having considered all of this and the evidence in this case, I've decided to not uphold this complaint. There's not much more I feel I can usefully add to what Mr D has already been told. But my reasons, which are broadly the same as the investigator's, are set out below.

<u>Suitability of the advice given to Mr D in 2012 and 2018</u>

In response to the investigator's assessment of the complaint, Mr D did not make any comment about their conclusions on the suitability element of the complaint. Mr D's silence on this matter could be seen as agreement and acceptance of the investigator's findings, in which case there would be no need for me to address this particular point. But for the sake of completeness, I have considered this point, and like the investigator, I think the advice Mr D received from SJP in both 2012 and 2018 was suitable. My reasons for reaching this conclusion can be summarised as follows:

- Neither of Mr D's existing pensions had any form of guarantee that he lost upon transferring to SJP – for example, safeguarded benefits such as a guaranteed annuity rate or an enhanced level of tax-free cash.

- Mr D's objective for capital growth over the long-term was reasonable – he was working, in his forties, and had many years before he anticipated retiring.

- The advice given was to replace something Mr D already had with something essentially the same. But Mr D's rationale for transferring – he wanted access to SJP's investment management and to have ongoing advice and reviews, so essentially to consolidate his pensions to enable that to happen – was in my view, a firm, and fair and reasonable rationale for transferring. So, I can't say it wasn't in his best interests at the time.

- SJP assessed Mr D as a 'Medium' risk investor. I've not been provided with the document SJP referred to as being part of the discussion around this. But I don't think this matters. Mr D's existing plan was already invested in what I think was likely reasonably described as a balanced or medium risk approach, so he had some existing investment knowledge and experience at this risk level. He also had many years to retirement and as such the capacity for loss, and the ability to withstand investment losses. So, I think SJP's assessment of Mr D as a 'Medium' risk investor was reasonable in the circumstances.

- SJP's recommended investment recommendation in both 2012 and 2018 was in my view suitable. According to the suitability report, the 'Balanced' portfolio had around a 50% equity-based content, which I think was appropriate for a 'Medium' risk investor. And the 2018 'Strategic Growth' portfolio had around a 75% equity-based content, which in my view was broadly consistent with someone wanting to take a 'higher end of medium' risk approach.

- While the SJP plan was costlier than Mr D's existing plans (there were also early exit charges) I think SJP made the costs clear as well as explaining the impact of the higher charges. So, I think Mr D was in a position to make an informed decision (the 2018 suitability note clearly describes that a detailed conversation was had around this.) I also think the impact of the higher charges, and so the outperformance required to better his existing plans, wasn't unreasonable. So, overall, I don't think the higher charges made the recommendations unsuitable.

<u>OAC refund request</u>

Mr D's relationship with SJP appears to have begun in 2001 when he started a pension plan with a regular contribution. Both this event and the one later on in 2012 when Mr D transferred the first of his exiting pension plans to SJP, happened prior to what is called the Retail Distribution Review (RDR), which from the start of 2013 changed the rules about the way advising firms, like SJP, were paid.

Prior to the RDR, so the period Mr D says he was concerned about not receiving regular reviews, advising firms, like SJP, were paid a commission by the product provider through an arrangement with the provider and the advising firm. This typically took the form of an initial commission based on a percentage of the invested funds, and an ongoing regular, or trail commission. And the illustrations SJP has provided from 2012, show this is likely what took place in Mr D's case.

So, it was not the case that Mr D paid a separate charge from his investment account at this time to pay for an ongoing advice and review service.

The trail commission payments, designed to pay the adviser to carry out any ongoing services – albeit the firm was under no obligation to do so to earn the commission – were effectively bundled into the overall cost or charge for the product / investment. This means, as the investigator explained, that even if Mr D had asked for any trail commission to no longer be paid to SJP, it would not have affected the charges he paid.

But this all changed following the RDR. Advisers could no longer be paid for advice by commission – this had to be arranged and paid for separately as an agreed fee. And this is what happened in Mr D's case in 2018 when he transferred his second pension to SJP. As the illustration shows, which Mr D has been sent, the OAC agreed and payable was 0.25% a year.

So, Mr D only paid an OAC to SJP from 2018 onwards and not before. So, as Mr D has said that he has no concerns from this point onwards because he's had regular reviews and meetings, there is no refund due to Mr D.

Mr D says that, regardless, SJP was under a duty to contact him during the period in question to update him on investment performance. But as I've explained above, SJP did not have to provide an ongoing service to earn the ongoing or trail commission it likely received.

So, for the reasons above, I do not uphold Mr D's complaint.

My final decision

For the reasons above, I've decided to not uphold Mr D's complaint, so I make no award in his favour.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 16 June 2025.
Paul Featherstone
Ombudsman