DRN-5036480

The complaint

Mr W1, as a beneficiary of funds from his late father's (Mr W) Retirement Account (RA), says St. James's Place Wealth Management Plc (SJP) was negligent because:

- It failed to ensure Mr W had completed an Expression of Wishes (EOW) form in respect of his RA, which meant the benefits he received had to be taken out of the pension wrapper.
- It failed to consider his lack of experience of financial matters and vulnerability in its dealings with him.
- The fees charged by SJP were not made clear.

This decision is focussed on those matters which impacted Mr W1. Separate complaints have been set-up to deal with matters relevant to his mother (Mrs W) and his siblings.

Mr W1 is represented in his complaint by his uncle (Mr Z). To keep matters simple I will mainly refer to Mr W1 throughout this decision.

What happened

SJP's adviser (Mr Y) had provided services to Mr and Mrs W since 2006. This included an annual meeting at which their current circumstances and objectives were reviewed. In 2016 Mr W switched three pensions he held with Scottish Widows, Friends Life and ReAssure into a RA with SJP.

Sadly, Mr W passed away in February 2022 and one element of his affairs that had to be considered was how to handle the benefits from his RA. As Executrix for her late husband's estate and beneficiary of his RA fund, it was Mrs W with the support of Mr Z who engaged with SJP about this.

On 12 April 2022 Mrs W and Mr Z met with SJP to discuss how to deal with Mr W's assets. An inheritance tax report was sent to Mrs W in May 2022. A follow-up meeting to discuss this took place between Mrs W and SJP on 10 June 2022. Suitability reports later produced for her children state that they were at this meeting. Mr Z said Mrs W attended on her own.

Following my provisional decision SJP has confirmed that Mr Z and Mrs W's version of events here is correct. The suitability report was factually incorrect, its adviser never met her children on 10 June.

A summary of discussions from 10 June 2022 was sent to Mrs W on 16 June. This confirmed agreement that the most tax efficient way of passing the pension monies to Mrs and Mr W's children, including Mr W1, was via a Flexible Access Drawdown dependents pension (FAD).

Mr Z says given the previous annual meetings with Mr W, Mr Y should've had a complete understanding of what was intended to happen to his RA and it was SJP's responsibility to have ensured the necessary forms had been completed. SJP says its adviser didn't know

about Mr W's intention to pass his RA benefits to his children in the event of his death until after his passing.

On 18 June 2022 Mr W1's mother asked for more information on the dependants' FAD. Mr Z says this was a new term introduced by SJP at the 10 June 2022 meeting. SJP provided some background on 22 June 2022.

On the 23 June 2022 SJP emailed Mrs W to confirm that in order to put a recommendation to her for a dependants' FAD for the children, it would need to obtain financial information from them each individually. It asked if she could arrange for them each to complete a fact find.

On 1 July 2022 Mrs W contacted her children to let them know their late father's RA funds of about £1.4 million, would be split between them equally. She indicated that Mr Y would be in touch to explain and discuss the proposal.

SJP later produced a suitability report for Mr W1. It indicated he had follow-up discussions with the adviser on 5 July 2022. SJP's adviser has now confirmed this was again misleading. An email was sent to all three children on this date providing an update about what was happening and seeking information from them to support the advice process.

Internal SJP records from as early as 11 July 2022 indicated that there could be an issue with passing Mr W's RA benefits to his children in the way it had proposed. But this didn't appear to trigger any discussions with Mrs W.

Instead, on 21 July 2022 Mrs W signed the letter of instruction giving consent that her late husband's RA was to be split evenly between their three children, including Mr W1, using a dependants' FAD. The instruction she signed stated:

"Please accept this letter as confirmation that as [Mr W's] wife and beneficiary under his will, I do not wish to claim for the benefit due under the above Retirement Account and instead would like these funds to be paid equally to our three children, noted below, as a Dependants Drawdown as per [Mr W's] wishes."

On 10 August SJP's adviser received confirmation from another internal team that establishing FAD's for all the children wasn't an option. He was told:

"As discussed yesterday unfortunately we are not able to set up drawdown account for the 3 "children" due to legislation rather than SJP rules. On death there are in effect 2 options open to us, subject to any nominations the plan holder may have lodged with us, that is which have been received by the admin centre prior to death we can consider making:

1. A lump sum payment to number of individuals as set out in the scheme rules:

a. Any persons (including trustees) whose names the Member has notified to the Scheme Administrators in writing

b. The Members surviving spouse, children, and remoter issue

c. The Members Dependants

d. The Individuals entitled under the Members will to any Interest in the Members estate

e. The members personal representatives, or

2. Income payments (drawdown) directly to a dependant or other individual nominated to us by the scheme member.

With regard to the income option where no nomination has been made SJP, as scheme administration, can nominate a nominee to receive such payment however this would not be

valid whilst there is a dependant or an individual or charity nominated by the member to receive benefits following their death."

"In this particular case we have 2 dependants who could receive an income, [Mrs W] as the widow and [Miss W] as she is under the age of 23, the other "Children" are not classed as dependants due to their age and therefore cannot qualify for a pension, neither are we able to nominate them as there are 2 dependants, we do however have the option to pay them a lump sum."

On 18 August 2022, Mr Y emailed Mrs W's children to tell them that as their father hadn't completed an EOW form for his RA the pension funds couldn't be transferred into a pension in their own names, via a dependants' FAD as had been planned. SJP recommended the funds should instead be transferred into a new UTA. The untaxed share Mr W1 would receive was around £461,000.

SJP sent Mr W1 an illustration for the proposed investment. This set out the potential benefits of the vehicle proposed, the fund choice and fees and charges. It confirmed the initial charge would be 4.5% of the investment and then an estimated 1.98% total ongoing charges each year.

Mr Z says there was no written communication from SJP with Mrs W between 21 July and 17 August 2022 informing her about this significant development. He says after four months of discussing a dependants' FAD arrangement for the children so they could receive their share of their late father's RA, SJP suddenly found this wasn't possible. And rather than discuss the situation with Mrs W it recommended a new course of action without any meeting or discussion with family members.

Mr Z says Mrs W and her children were very vulnerable given Mr W's passing and none of them had any previous financial experience. He says one of their sons asked for a telephone call with the advisor regarding the email. This took place on 26 August 2022 and was followed up with an email, in which the benefits of investing into a unit trust were explained and why the dependant's FAD wasn't an option.

Funds from Mr W's RA appear to have been allocated to his children with 'prices dates' of 31 August 2022 and 1 September 2022.

Suitability reports were provided for all three children dated 13 September 2022. These stated:

"Unfortunately, your father did not have an Expression of Wish or any nominated beneficiaries noted against this plan and as such the plan could only provide your mother with a dependants flexi access drawdown arrangement, however as your mother already has her own suitable arrangements in place, she requested that these pension proceeds were split between you and your two siblings equally."

"As you and your siblings are no longer classed as dependants, the only options you had to receive these benefits was via a tax-free lump sum, as your father passed away before the age of 75."

Mr W1's investment objectives were summarised as follows:

"Given the amount of funds you were due to receive, you were concerned about holding this level of money on deposit and what the effects of low interest rates and rising inflation will have on these funds over time and you therefore wished to look at immediately investing these proceeds into a suitable investment for your future benefit."

"Your overall priority for this investment is to therefore invest these funds in the most tax efficient way possible and benefit from the potential of greater capital growth over the longer term, above what is currently offered through cash deposits."

And Mr W1's circumstances and attitude to risk were recorded in the following terms:

"You have a Student Loan of £55,670 and an Interest Only mortgage of £152,999 which could have been repaid as an alternative to investing, avoiding further interest charges on the outstanding borrowing. This though was not a concern because you have only just taken out this mortgage and would be liable to the maximum early repayment penalties, which are 5% of the amount borrowed and this is not something that you wished to pay as your payments are affordable, at a fixed interest rate of 2.25% for the next 5 years and which you anticipate your investments to grow more by. You are also not yet required to repay your student loan."

"You have an income of £15,609 per annum, which is a tax free stipend…which falls into the nil rate tax bracket. During our discussions no material health issues were identified which could impact upon"

"We had a conversation about investment risk as part of our discussions. Some key factors we discussed were your objectives, your investment experience, the time horizon over which you are investing and your attitude to, and ability to withstand, investment losses.

"We also discussed the range of example portfolios and funds offered by St. James's Place, and the importance of holding a diversified range of investments."

"You have an emergency fund of £10,000 held in accessible Savings Account. Now that you have purchased your property, you have no real large expenses coming up and feel that this amount will be sufficient for your needs for any short term or unexpected one-off costs. I agreed that this is a suitable amount to retain on deposit, given increasing inflation and represents more than 3 months' worth of expenditure at the least."

"Taking into account all these factors, we agreed you are a Medium Risk investor on our risk spectrum. You want your capital to keep pace with inflation and are investing for at least five years. You want the potential to achieve better long-term returns and are comfortable with your capital being invested in equities, some of it overseas, bonds and in some cases property. You realise there may be significant falls in the value of your investments."

"Your history of previous investment decisions demonstrates some investment experience. Although your investments were initially invested for you by your parents, you have now held these in your own name since the age of 18 and have an understanding of how these investments can fluctuate in line with the markets and have also witnessed some very volatile periods in the markets, such as Covid and the Ukraine war. Your investments are invested across a wide selection of equities such as UK Equity, Worldwide Income, Property, 11 Global Value, along with more concentrated funds, such as Japan, Emerging Markets and North America."

"You intend to use your investment to generate capital growth for your future benefit although at this stage, you have no particular objective or goal for these funds at this time."

"With this aim in mind, the time frame for your investment into your Unit Trust is more than 15 years because this is in line with your investment aims and objectives of funding your ISA over your lifetime to provide you with a substantial tax-free investment for your future benefit and to be able to repay your outstanding interest only mortgage tax efficiently at the end of the mortgage term."

SJP identified alternative investment options, and recommended a UTA and the investments to hold. Mr W1 accepted its recommendations.

The cost of SJP's initial advice and services to Mr W1 were 4.5% of funds under investment. That equated to £20,764.

Mr Z questions whether SJP explained what was happening i.e. that the funds were being taken out of a pension wrapper and put into a taxable account and the consequences of this.

The forms sent by SJP to each of the children to establish the UTA's were returned by all three and the plans were set up.

On 4 March 2023 Mrs W raised a complaint with SJP. She had several concerns about what had happened the previous year. This included that it had failed to ensure Mr W had completed an EOW form in respect of his RA; that it didn't have her authority to waive her rights to the benefits from her late husband's RA in order to transfer the funds into Unit Trust Accounts (UTAs) for her children; and it failed to consider her and her children's lack of experience of financial matters and their vulnerability in its dealings with them.

In summarising her complaint Mrs W said:

"…I do not feel the actions taken by SJP regarding the transfer of [my late husband's] estate and pension to me and my children have been in my family's best interests and I would like an independent person to review them."

SJP responded to Mrs W's complaint on 9 August 2023. It concluded there had been no indication prior to Mr W's passing that he wanted the proceeds of his RA to go to his children. The suitability report from 2016 when he switched his personal pensions to SJP noted the beneficiary was to be Mrs W. It said in his Will from 2019 he had left his residuary trust fund with her as well. It said the first indication Mr Y had that the RA benefits were to be distributed to their children was after Mr W had passed.

SJP concluded its response to Mrs W in the following terms:

"…although I feel it has not impacted the outcome of the distribution of assets to [your children] I feel there was a delay in informing you the DFDDs was not an option for them and I would like to offer £200 in this matter. In addition, I have included a payment for £150 to reflect the distress and inconvenience caused as a result of you having to bring this matter to our attention. I am sorry for the delay in responding to your complaint, this is not the service that we pride ourselves on and to recognise this I would like to offer you a goodwill gesture of £100…This brings my total offer to £450."

Mrs W thought SJP's offer was inadequate.

An Investigator at this Service considered Mrs W's case. She found no fault with SJP for there being no EOW on file for Mr W. And that as a dependants' FAD wasn't an option, the recommendation made for her children's share of the RA funds to pass into individuals UTA's was suitable. She also thought the fees for dealing with this had been set out clearly in the paperwork sent to all her children.

Mr Z on behalf of Mrs W and her children disagreed with the Investigator's findings and conclusions. He didn't think that key elements of the complaint raised had been responded to.

As both parties couldn't agree with the Investigator's view, Mrs W's case was passed to me to review afresh. This also led to individual cases being established for each of her children, including this case in Mr W1's name, because they were independent beneficiaries in their own right, with their own distinct concerns to be addressed.

I issued my provisional decision in August. Both parties have provided additional information and arguments, and I will deal with the key matters arising in this final 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.

Where there's conflicting information concerning the events complained about and gaps in what we know, my role is to weigh the evidence we do have and to decide, on the balance of probabilities, what's most likely to have happened.

I am grateful to both parties for the further information they've provided about some of the basic facts about what happened, where accounts were previously in conflict. In particular the extent of contact between SJP and Mrs W's children. It's now agreed there was no face to face contact between SJP's adviser and the children. And that the contact between SJP and the children during this period concerning their father's RA was minimal. So, the suitability reports it issued to them were factually incorrect and misleading on this matter.

I've not provided a detailed response to all the points raised in this case. That's deliberate; ours is an informal service for resolving disputes between financial businesses and their customers. While I've taken into account all submissions, I've concentrated my findings on what I think is relevant and at the heart of this complaint.

I'm upholding Mr W1's complaint. I'll explain why.

The first thing I've considered is the extensive regulation around the services like those performed by SJP for Mr W1. The FCA Handbook contains twelve Principles for businesses, which it says are fundamental obligations firms must adhere to (PRIN 2.1.1 R in the FCA Handbook). These include:

- Principle 2, which requires a firm to conduct its business with due skill, care and diligence.
- Principle 3, which requires a firm to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
- Principle 6, which requires a firm to pay due regard to the interests of its customers and treat them fairly.
- Principle 7, which requires a firm to 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.

So, the Principles are relevant and form part of the regulatory framework that existed at the relevant time. They must always be complied with by regulated firms. As such, I need to have regard to them in deciding Mr W1's complaint.

I'll now turn to each of the main complaint points raised by Mr W1 against SJP and in doing so also address the additional themes raised on his behalf in response to my provisional decision.

The absence of an EOW for Mr W's RA

Mr Z on behalf of Mrs W's children, including Mr W1 says:

"The three children have also lost the ability to keep their share of their father's pension in a tax free wrapper because no EOW had been signed. This is despite the St James Place Advisor being fully aware this was their father's intention and should have been confirmed at his annual review meetings. The three children were existing clients of SJP but none had ever met the Advisor to discuss individual financial planning. The children lost the ability to keep their share of the £1.38m in a tax free environment for possibly up to 50 years (they were all under the age of 30)."

SJP told me:

"[Our adviser] was not made aware of Mr W's health issues approaching the time of his passing so planning last minute for such a sad outcome was not possible as [we weren't] aware Mr W was in this position."

"I accept fully that it is good practice for an up-to-date EOW to be in place, but it is not mandated, and pension legislation does not insist that it is, so whilst this is best practice for an EOW to be in place, it is not wrong that there wasn't."

I've read a file note of a conversation between a member of staff at SJP looking into Mrs W's complaint and its adviser. To summarise, the adviser felt the pension administrator [a sister company of SJP] had failed in its responsibility to make clear the importance of the EOW procedure. He didn't think there had been sufficient training of advisers around the subject. And that head office had actually reinforced his understanding of the situation. SJP refutes its adviser's testimony here.

While pension holders are not required to complete EOW forms, they should certainly be made aware about what they are for and the implications of completing these, or otherwise.

SJP accepted its adviser failed to follow best practice. It now accepts its adviser, who had a duty of care to Mr and Mrs W, wasn't aware of the relevant regulatory position. That meant he couldn't have conveyed in full to Mr W the relevance of an EOW form and the implications of completing it, or not.

This is a significant failing. And I conclude SJP has failed to demonstrate in this case, in respect of the EOW and related matters, that it conducted its business with due skill, care and diligence.

While I've concluded that SJP was responsible for failings in respect of the service provided to the late Mr W and subsequently to Mrs W, I need to consider what would've happened if everything had gone properly. And then what, if any, difference this would've made to Mr W1 and his siblings.

In making her complaint to SJP, Mrs W said:

"[My husband] had made it clear to SJP that he wanted his Retirement Account to be passed to our three children because of the tax benefits. Given that you and your office acknowledged this it seems extremely surprising to me that no EOW form had been lodged with your HO. Surely someone at SJP should have flagged there was no signed EOW form on the many occasions when we met or corresponded with you before [my husband's] death and therefore the potential risk to losing all the tax benefits from having the monies held in a pension wrapper?

Conversely SJP told me:

"…[our adviser] was not aware of the recent nomination changes that had come into legislation following the Taxation and Pensions Act 2014, at the time of Mr W's passing. Mr W left his entire estate to Mrs W in his Will…and whilst it is clear Mrs W wanted both her

own pension (via her EOW signed in May 2020) and Mr W's pension to pass to their children, there is no tangible evidence that proves it was Mr W's wish as well…"

"It is not possible to be certain what Mr W's wishes were and nothing to prove he wanted his three children to benefit over Mrs W. Would it not appear more likely that Mr W wanted her to have the choice of whether she wanted to retain the pension and her choice has been that she does not require the pension benefits and preferred her children to have access to the money now, which is what has happened. I do not believe there is any information, that either was or wasn't presented at any time that would have led to Mrs W making a different decision other than for her children to have the money from Mr W's pension."

SJP's adviser says he recalls that on inception of Mr W's RA in 2016 the EOW form was discussed and it was left with him to contemplate, as he was unsure at that time who should receive the benefits in the event of his passing. SJP hasn't been able to provide any other evidence to support its adviser's testimony. And it can't confirm the EOW was discussed at subsequent reviews.

There is no contemporaneous evidence to show what Mr W's intentions were for his RA funds in the event of his passing. While I agree he would've wanted the funds passed in a way which maximised the benefits to his family, there were options to achieve this. And while his consideration would undoubtedly have included consideration of the tax efficiency of any plans, I think he would also have thought very carefully about the individual and collective circumstances and interests of his wife and children. This is a complex matter.

SJP's position is that it is a leap too far to conclude that had it provided a proper service to Mr W from 2016 in respect of the EOW that he would've completed one. It says it's likely he would've wanted his wife to have control over the decision making. That's a reasonable point to make. But as I understand it, and as confirmed by its own staff in the case file, the provisions made in an EOW can be flexible. For example, the bulk of Mr W's RA benefits could've been indicated in Mrs W's favour, but if she were to refuse the benefits they could've then passed to their children.

I've concluded, on balance, that had Mr W been provided with an effective service by SJP he would've completed an EOW form, and in a manner that provided Mrs W with the sort of discretion she went on to demonstrate when she thought she was passing the benefits from her husband's RA to their children in equal measure, including Mr W1, via FADs. SJP hasn't made a compelling argument for a situation where Mr W wouldn't have completed an EOW, if he'd been properly informed.

Mr W, Mrs W and Mr W1 paid significant fees to SJP for advice services. It failed to pay due regard to their interests.

Mr W1's inexperience and vulnerability

Mr Z has challenged the testimony of SJP's adviser on a number of points, in particular around the extent of any face-to-face engagement between him and Mrs W's children. SJP's suitability report for Mr W1 says:

"I am writing further to our recent discussions following our meeting on the 10th June 2022 and our follow up discussions on the 5th July 2022 to confirm my recommendations in relation to your Investment Planning objectives following the inheritance you have received from your Late Father. I made you aware of your other financial planning needs such as Retirement Planning, but these were not a priority for you to discuss at this time."

"I offered you the opportunity to have a friend or relative present during our discussions and your mother was also in attendance during our initial meeting."

As I've already noted Mr Z's version of events was correct. SJP have acknowledged that what its adviser recorded about his interactions with Mrs W's children, including Mr W1, was factually incorrect. It was misleading. This is another failing.

I agree with Mr Z that it would've been good practice for SJP to have sought a meeting with the W family when the proposal it had explained to them for sharing out Mr W's RA benefits was found to be impossible. Instead it communicated this significant development by email, including its new recommendation. It did so without a full and clear explanation.

Mr Z told us:

"Mrs W and her three children were all vulnerable individuals. They had recently lost a husband/father and none had any financial experience or knowledge. SJP failed on numerous occasions to take this into account."

"Mrs W is of lower financial knowledge and experience as are the children. [They] were unaware and had no understanding about the financial implications of taking the monies out of a pension wrapper. A meeting should have taken place when it was discussed what they wanted to happen. This is a big change with large tax implications. Given the change and its consequences surely Mrs W should have been consulted with an independent person, such as myself, in attendance?"

SJP told this Service:

"All 3 children could also be potentially vulnerable due to bereavement and inexperience. I did however consider this as part of my recommendation and felt comfortable proceeding with the advice for a number of reasons:

- The children were all clients of mine before their father passed away, and all had investment experience with SJP.
- Mrs W instructed me to stock transfer their remaining designated unit trusts into their sole names after Mr W's death. I felt that had their mother had concerns around her children's ability to cope with decisions/finances, she would not be passing them c.£200,000 each. Mrs W must have felt that her children were in a reasonably good head space with sufficient financial knowledge to cope with this amount of money.
- Mrs W passed me each of her children's mobile phone numbers, so that I could discuss the process with them individually. Again, I feel she would not have done this if she felt her children were in a vulnerable situation impacting their ability to make sensible financial decisions.
- When discussing the options/recommendation with the children I did not see any concerning behaviour that indicated an inability to understand the advice being given."

In responding to my provisional decision, Mr Z said:

"Mr W1 owned investments in an ISA account which had been transferred to him over previous years by his parents Mr and Mrs W. Mr W1 does not recall ever being asked by SJP to fill out any risk assessment forms when this account was set up. Mr W1 had never had a meeting with Mr Y and therefore his only "experience" was from the investments he held. He had never had a conversation with anyone at SJP regarding risk assessments, tax issues, fund performances, risk/reward etc. Mrs W later transferred the UT account which she and Mr W had held on behalf of Mr W1 into his own name in June 2022."

"It is therefore in our view incorrect to make the assumption that Mr W1 had "investment experience". Mr Y had been the SJP advisor to the W family over many years and all the

children's investment decisions were taken by Mr and Mrs W in their discussions with Mr Y. So Mr W1, possibly naively, accepted the recommendation he was given by Mr Y was full and complete. However it is clear from the family WhatsApp messages this was not the case and the fact that the advisor had not offered a financial meeting to discuss the situation and any alternative options."

Having reviewed the case file, while I don't believe Mr W1 was very experienced in investment and pension matters, he wasn't a novice. Leaving aside the £460,000 he was about to inherit from his father's RA, he already had about £300,000 in assets in different vehicles including a savings account, premium bonds, an Individual Savings Account and a Unit Trust Feeder account, and within these a variety of investments. He also owned a property.

I note all the recipients of SJP's advice had the opportunity to follow-up with its adviser. All the siblings went on to accept SJP's recommendation. I've not seen any evidence to suggest Mr W1 didn't have capacity to engage with the advice process

The passing of Mr W1's father was a deeply sad time for him, his siblings and her mother. At times like this people are more vulnerable. But not everyone experiences the same level of vulnerability.

Mr W1 had the support of his family. And Mr Z, who was a chartered accountant and had a reasonable knowledge of tax and good financial planning, was also involved in supporting them.

I don't think the things that went wrong related to Mr W1's inexperience or vulnerability. For example, I can't see that he made any irrational decisions in his dealings with SJP. Rather the problems arising related to SJP's poor practices, as I've already identified. I do accept these failings would've been more keenly felt because of his circumstances at the time.

Clarity around the fees to be charged to Mr W1

In her view the Investigator noted that each of the children received an illustration from SJP setting out the fund choices recommended and the fees and charges. It confirmed the advice fee would be 4.5% of the funds under management. It also confirmed the cost of ongoing advice and investment fees.

In responding to the Investigator Mr Z said:

"Mrs W and her children were very vulnerable given the death of Mr W and none of them had any previous financial experience. Given their vulnerability and total lack of knowledge, and experience, would they understand this? Surely a meeting or a Zoom call would have been appropriate given the children were inheriting a substantial sum of money and had no idea of the financial implications?"

I have already dealt with matters relating to Mr W1's vulnerability and experience. I think it's more likely than not he understood and accepted the costs associated with the advice he was getting. Of course, that is a separate matter to why the advice to invest in an UTA was necessary in the first place. And the quality of that advice and service.

Finally, Mr Z has raised another matter on Mr W1's behalf. In responding to my provisional decision he raised the issue of the costs he'd incurred with SJP. He said:

"You have pointed out and highlighted SJP's "significant failings", and "significant development without a full and clear explanation". We have also pointed out that no meetings were ever held between SJP and Mr W1."

"It is worth noting that Mr W1 incurred a RA transfer/set up charge of £23,082 from SJP. Furthermore he has incurred ongoing SJP charges as he felt he should not move his account to another financial advisor until the outcome of his complaint has been concluded. For example in 2022-2023 SJP charged a further £11,565 in annual fees."

"It is clear that no meetings and financial advice have ever been given by SJP to Mr W1. We therefore believe that all fees incurred with SJP were inappropriate."

I note that Mr W1 has also raised several other issues in relation to the service he's previously received from SJP, for example he says he doesn't recall ever having a risk appetite assessment carried out.

Mr W1 is raising concerns about the services he's received from SJP out with the specific complaint he's raised with this Service already. The scope of this complaint, initiated by his mother in 2023, is set out at the beginning of my decision.

It wouldn't be appropriate or fair for me to make a judgement about matters outside of this complaint. Should Mr W1 have any concerns about other matters to do with SJP, then in the first instance he should detail these and address them to the firm so that it has an opportunity to respond.

Putting things right

I'm upholding Mr W1's complaint. The purpose of redress is to return people to the position they would've been in, as far as is reasonably possible, had it not been for the failure of the regulated firm.

The difficulty here is arriving at fair redress for the things that went wrong. This is something both parties have alluded to in their respective submissions. For example, the concluding comments of the member of staff at SJP who investigated Mrs W's complaint noted:

"Impact now to the beneficiaries: They have received lump sums as they would have had…however it was not in the most appropriate way. They had to pay the initial fee as it was invested into a UT while SJP guidelines if it had stayed in a fDD pension, would have had no initial charge but EWC [early withdrawal charge] in a 5 year sliding scale. The management fees for a UT are lower than a pension, that is a benefit to them, but now the beneficiaries will be impacted by CGT when sell it which would not have happened under pension wrapper."

St. James's Place Wealth Management Plc hasn't provided a strong enough case to demonstrate the costs associated with a UTF will be lower for Mr W1 over the medium and longer term, than would have been the case had a dependent's FAD been established. Looking at the relevant materials I don't think the difference is substantial.

And when I asked Mr Z what financial detriment he believes the W family has suffered, he said:

"…The three children have also lost the ability to keep their share of their father's pension in a tax free wrapper because no EOW had been signed…The three children were existing clients of SJP but none had ever met the Advisor to discuss individual financial planning. The children lost the ability to keep their share of the £1.38m in a tax free environment for possibly up to 50 years (they were all under the age of 30)."

"The financial impact of unknowns such as income tax and capital gains tax rates for trading and holding shares outside a pension and inheritance tax rates are hard to quantify together with knowing how long each individual is going to live for."

I agree, the tax regime relevant to these matters is subject to regular and often significant change. Indeed, there is much speculation at the moment about what might happen in the October budget, as there often is in relation to any fiscal event. And these uncertainties are compounded by Mr W1's individual circumstances, objectives and choices over the coming years.

So, I've concluded any potential future financial losses to Mr W1 are too uncertain and far removed to quantify with any reasonableness. But there have been several serious failings by SJP. He paid £20,764 for the advice it gave him. And for the reasons I've established, there's a question about the necessity of that advice, its scope and quality.

I've decided St. James's Place Wealth Management Plc's must reimburse 100% of the fees Mr W1 paid for the initial advice and services he received to transfer his share of his father's RA into a UTA.

Redress is often not a scientific matter. Nevertheless, I believe what I've proposed is fair and reasonable in the circumstances.

SJP made an offer to Mrs W to settle her original complaint. It apologised for certain aspects of its service to her and offered her £450 in recognition of the trouble and upset it had caused. It didn't make any offer for the impact it had on her children.

When I'm considering a complaint like Mr W1's I think about whether it's fair to award compensation for distress and inconvenience. This isn't intended to fine or punish a business – which is the job of the regulator. But when something's gone wrong, recognition of the emotional and practical impact can make a real difference.

We're all inconvenienced at times in our day-to-day lives – and in our dealings with other people, businesses and organisations. When thinking about compensation, I need to decide that the impact of St. James's Place Wealth Management Plc's actions was greater than just a minor inconvenience or upset. It's clear to me that this was the case here.

I also require St. James's Place Wealth Management Plc to pay Mr W1 £250 in recognition of the distress and inconvenience it caused him as a result of what it got wrong.

My final decision

For the reasons I've set out, I'm upholding Mr W1's complaint. I now require St. James's Place Wealth Management Plc to put things right in the way I've directed.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 29 October 2024.
Kevin Williamson
Ombudsman