

The complaint

Mrs W, as Executrix of her late husband's estate and potential beneficiary of funds from his 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.
- She waived her rights to the benefits from her late husband's RA on the basis of SJP's advice they would flow to her children via dependent's flexi-access drawdown accounts (FADs), but that didn't happen.
- It failed to consider her and her children's lack of experience of financial matters and their vulnerability in its dealings with them.
- The fees SJP charged her children were not clear.

This decision is focussed on those matters which impacted Mrs W. Separate complaints have been set-up to deal with matters relevant to her individual children who were all aged over 21 at the time of the events complained about.

Mrs W and her children are represented in their complaints by her brother (Mr Z). To keep matters simple I will mainly refer to Mrs W 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 on 15 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 her on 16 June. This confirmed agreement the most tax efficient way of passing the pension monies to Mrs and Mr W's children was via a 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 Mrs W 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. It promised a more detailed recommendation in due course, but this didn't materialise.

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

Suitability reports produced later by SJP suggested follow-up discussions were held with Mrs W's children on 5 July 2022. Its adviser has now confirmed this was again misleading, an email was sent to the 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 using a dependant's 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 FADs 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 [Ms P] 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 dependant's FAD as had been planned for. SJP recommended the funds should instead be transferred into a new UTF for each child. The untaxed share they would each receive was around £461,000.

An SJP illustration was attached for the proposed investment. This set out the potential benefits of the investment, the fund choice and fees and charges. It confirmed the initial charge would be 5% of the investment and then an estimated 1.98% total ongoing charges and costs 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. The reports set out the objectives, circumstances and appetite for risk for each child. They detail the reasons for the recommendations being made and other options considered.

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. He says Mr Y never spoke to the two other children. The forms sent by SJP to each of the children to establish the UTF'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 Feeder accounts (UTFs) 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 she 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 dependents FAD wasn’t an option, the recommendation made for her children’s share of the RA funds to pass into individuals UFT’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 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. 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 Mrs W'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 Mrs W. 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 Mrs W's complaint.

I'll now turn to each of the main complaint points raised by Mrs W against SJP and in doing so also address the three main themes she has set-out in her response to my provisional decision.

The absence of an EOW for Mr W's RA

Mrs W's argument here was summarised in the following terms:

"...SJP have been negligent in their financial advice and have produced no clear documented evidence of what would happen to the monies held in a pension wrapper in the event of Mr W's death...We believe SJP had a duty of care to produce an EOW form when Mr W's retirement account was set up in 2016 and further reviewed at the subsequent annual meetings."

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.

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. Mrs W's pension is valued at a relatively much smaller sum compared to Mr W's pension, so it is easy to understand that why, before Mr W's death, that Mrs W was so confident she wanted her pension to pass to their children."

"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 Mrs W 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 many 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 had they been nominated.

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 via FADs. SJP hasn't made a compelling argument for a situation where Mr W wouldn't have completed an EOW.

Mr W and Mrs W were paying significant fees to SJP for an ongoing advice service. In respect of the matter in focus here, it failed to deliver this with due care, skill and diligence.

The authority to pay benefits from Mr W's RA into UTF accounts for his children

SJP's failings around establishing an EOW for Mr W weren't restricted to the service it provided to him. Subsequently it also led Mrs W to believe that following her husband's passing it would be possible to pass on the benefits from his RA to their children via individual FAD arrangements.

In responding to the Investigator's view, Mr Z said:

"Please note there was no written communication between 21 July 2022 and 18 August 2022 from SJP to Mrs W regarding the new fact that there was no EOW and therefore it was not possible to pass the Retirement Account into a Dependents Flexi-Access Drawdown arrangement to her children. The email on 18 August 2022 to the three children was a fundamental change to SJP's previous advice. Did SJP suggest that a meeting should be arranged to outline the different options? Where was the SJP advice to Mrs W to explain the situation and discuss all the new investment options including the possibility of retaining the monies in a Pension account for the benefit of Mrs W?"

"This would be a large change to the value of the family's future money with the retirement account monies coming out of a pension tax wrapper and into a taxable environment. Such a decision could have large financial implications. This was not explained to Mrs W. It therefore would appear after four months of discussing a Dependents Flexi-Access Drawdown, SJP 'suddenly' found they had no signed paperwork and 'immediately' decided to recommend a new course of action without any meeting or discussion with the vulnerable family."

A significant thrust of the argument made on Mrs W's behalf to this Service is that the option of Mrs W retaining the benefits from her late husband's RA should've been explored. And there is concern that by not doing so there is potential for financial detriment.

SJP told me:

"I cannot explain the timeline here in terms of the information in the letter [presumably reference to Mrs W's authority to pass the benefits to her children]. The pension provider

SJPUK have accepted the letter, I don't know if this meets their requirements this may be a question for SJPUK, the pension provider."

"What was clearly understood by [SJP] was that Mrs W wanted her children to benefit from Mr W's pension assets. I do not believe anyone is suggesting that Mrs W would have wanted to retain the pension for herself. If it is viewed that Mrs W wasn't aware of all the facts and options at the time it was known dependant's drawdown was not possible, it seems very reasonable to say that she would have still proceeded with reneging her entitlement to Mr W's pension in favour of her children."

"The internal email written by [VV] shows that following a meeting on 10/06/2022 Mrs W felt that she had sufficient capital, the notes confirm "[Mrs W] does not require any additional provisions, she feels her other assets and assets inherited from [her late husband] will provide her with sufficient means". Further to this Mrs W has not complained that she needed or wanted the funds."

"Mrs W had already established she had significant wealth to meet her needs and at the age of 62, in good health was expected to live to beyond age 75. Therefore, without withdrawing capital from Mr W's legacy pension and gifting in her own name (IHT risk), it would be unlikely that she would be able to pass on Mr W's pension benefits tax free to her children, if she didn't do so at this time, or later if she were to make IHT gifts. If you do conclude that there are gaps in the ideal process, we shouldn't lose sight of the fact that we need to consider what would have been done differently, if anything."

While I follow the thrust of SJP's response, aspects of it are curious or miss the point. It's reference to a sister firm accepting Mrs W's letter of authority appears to pass the buck. The point is Mrs W declined benefits from her late husband's RA in favour of their children on the understanding funds would pass into FAD plans. This was all based on its advice to her, and presumably SJPUK acted in good faith when carrying out Mrs W's instruction, unless SPJ can show that it informed its sister firm the transaction shouldn't proceed?

It's surprising internal communications at SJP as early as 11 July 2022, which indicated Mr W's RA benefits couldn't be passed onto his children via a FAD arrangement because of the absence of an EOW, weren't acted on effectively. Mrs W went on to assign her rights to the benefits from her late husband's RA to their children on 21 July 2022, based on an incorrect understanding about the vehicle that would be used to do this.

Further, it wasn't until 18 August 2022 that Mrs W was made aware Mr W's RA funds couldn't be transferred to her children via FADs. At that point, via an email to her children SJP made them aware of the situation and proposed an alternative approach to moving the tax-free benefits to them via UTF's.

It follows that I find SJP was responsible for further significant failings around its handling of the EOW and the service it provided to Mrs W.

I've considered whether SJP's further failings had an impact on Mrs W, as potential beneficiary of her late husband's RA. Had it informed her about the position with the EOW and engaged her in the options available, would she have decided to have retained the benefits from her husband's RA? In responding to my provisional decision Mr Z and Mrs W say:

"We now understand from internal SJP communications they realised on 11/07/2022 a FAD to Mrs W's children was not possible. So given the need for a change of strategy Mr Y should have organised a further meeting with Mrs W to explain the options. It is likely Mrs W would have again asked Mr Z to attend. Mr Z would have ensured Mrs W was made fully aware of the tax consequences of taking monies out of a pension wrapper. Furthermore he

would have advised Mrs W to retain Mr W's pension monies in her name and pass other investments over to her children."

"Instead during the phone call Mr Y made to me on 18/08/2022 I felt that I had no other option but to accept that this was the only option available. I was confused by the fact that I had been told one thing by SJP (a flexi draw down) only to then be rushed into making a different decision for the RA account. It was promoted as the only option to me and so perhaps naively I went along with this decision, trusting in my long association with SJP. I certainly did not understand that the tax free benefits of this pension pot would be lost."

SJP's adviser believes this was unlikely, he said:

"When discussing the SJP Pension with Mrs W following Mr W's death, she made it very clear that Mr W wished for his pension to go to their children, Mr W passed away before his 75th Birthday, this meant that the pension monies of c.£1.4mil could pass to their children as a tax-free lump sum and IHT efficiently, as there were no gifting implications. This was particularly of benefit to Mrs W given the size of their estate."

"Had Mrs W decided to use other assets to gift to the children, this could have been completed in 2 ways:

1. Deed of Variation (DOV) of Mr W's Will – as the Will could be varied to pass assets to the children instead of Mrs W, this option was considered and discounted on the basis that the maximum that could be varied without IHT implication was £325,000. It was felt that Mrs W inheriting Mr W's NRB to later offset against her estate was more beneficial. Mrs W had expressed the want to pass Mr W's pension to the children worth c.£1.4mil, therefore a DOV would not be appropriate here to achieve this level of inheritance for the children as this would be over the NRB.

2. The second option would be for Mrs W to gift other assets to the children and retain the pension. This option would however have meant Mrs W personally gifting the assets to her children, which would have been a substantial PET with a 7 year gifting clock. Again, this was considered but discounted on the basis that should Mrs W not live 7 years, this substantial gift would have fallen back into her estate. I was also mindful that it was beneficial for the ISA to be retained by Mrs W, so that the APS could be utilised. This would provide, along with her own ISA, money sheltered in a tax efficient environment to provide a tax free income later in life, something the children would not have benefited from."

"Finally, I also considered that if the pension were to pass to the children now, it passes completely tax free. If Mrs W retained the pension and gifted other assets, should she pass away after her 75th Birthday, the pension would be inherited by the children but liable to income tax at the marginal rate of the beneficiaries. As all 3 children, whilst relatively young, are university educated and are in good jobs already, they will always be taxpayers and possibly in the future at higher/additional rates. Meaning inheriting the pension monies later in life taxable to income tax would be a disadvantage."

"My recommendation into ISA/UTF's meant that over their lifetime's gains could be managed and ISA allowances utilised for tax efficiency. The rate of CGT would also be lower than income tax, should withdrawals incur tax in the future. Mrs W was keen for all 3 children to be treated equally following the death of their father, hence the recommendation for ISA & UTF for all 3 children"

I think a decision by Mrs W in July 2022 about whether or not to have retained the benefits of her late husband's RA, or to have proceeded to share these equally amongst her children had significant pros and cons. There's a need to avoid the benefit of hindsight. And on balance, I think SJP has made a reasonable argument here about the approach it advanced.

However, I haven't seen SJP provided Mrs W with any advice that is contemporaneous with the events complained about, which is along the lines it has subsequently articulated. This is another troubling failure.

It's also proper to note Mrs W received notification from SJP about a change to the plans she had signed up to on 18 August 2022. She says she was confused by the change of approach advised by SJP, felt rushed into making a different decision and was too trusting in because of her long association with the firm. But she didn't question what was happening. Had she done so there may've been an opportunity to have halted the process.

There may be an on-balance argument here that had Mrs W been provided with proper advice by SJP about her options then she would've still proceeded to have assigned her benefits to her children, rather than retaining them and gifting money.

However, leaving aside the clear failings of SJP in its dealings with Mrs W, I think this aspect of her complaint is somewhat moot. That's because I've already concluded SJP should've provided Mr W with proper advice around the EOW provisions. And that had it done so, I can't see there was any advantage to him in not engaging with that process, given the flexibilities it provided for. It's also clear what Mrs W's intentions were for the benefits from his RA given the actions she took in July 2022.

The difficulty here will be 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, this could be how FOS views it, 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 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."

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. 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)."

"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. And there are more uncertainties concerning the individual circumstances, objectives and choices that will be made by each of Mrs W's children.

What does seem clear is that any potential financial detriment, if it occurs as a result of SJP's failings, will be felt by Mrs W's children. They have brought individual complaints which I will be considering separately.

Mrs W's vulnerability

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."

SJP's adviser said:

"Mrs W could be identified as potentially vulnerable due to the sad loss of her husband, however having discussed the distribution of Mr W's estate many times with Mrs W, including face to face meetings at her home, I do not feel this potential vulnerability impacted her ability to make decisions."

"Mr and Mrs W were clients of mine for over 15 years, they have also been personal family friends for over 20 years, with this in mind I know Mrs W well and her behaviours appeared normal for her, I did not observe any behaviour to indicate that she was struggling in any way or that she was unable to cope with the decisions she was making. Mrs W has always been involved with the family finances and had a very good understanding of what is held where and by who, she provided all required information without delay."

"I met with her face to face at her home in April 2022 and then again in June 2022. During our meetings Mrs W was composed and did not get visibly upset or struggle to discuss Mr W and his finances. At our June meeting she recalled clearly what we had previously discussed showing an understanding of the options available to her and was keen to move forward with the distribution of the pension, as this was held outside of the markets in cash."

"During our meeting in June, she also asked for assistance going through some paperwork as she needed to collate all information for Mr W's tax return. She did not seem to struggle with this, and this involved dividend income from various individual shares. She appeared to be very on top of everything and keen to get everything sorted."

SJP noted it now understood Mr W had been diagnosed with a terminal condition and had been ill for some time, although it had not been made aware of the situation. Mr W's passing was therefore not sudden. Following his passing Mrs W had notified Mr Y the next day asking for advice about what to do about Mr W's finances.

The passing of Mrs W's husband was a deeply sad time for Mrs W and her children. At times like this people are more vulnerable. Of course, not everyone will experience the same level of vulnerability.

Mr Z, who was a chartered accountant and had a reasonable knowledge of tax and good financial planning, was involved in supporting Mrs W. For example, he attended a meeting with her and her SJP adviser in April 2022, when her financial affairs were discussed in some detail.

In reviewing the information available to me I don't find SJP treated Mrs W inappropriately. I don't think the things that went wrong related to her vulnerability. For example, I can't see that she made any irrational decisions in her dealings with SJP. Rather the problems related to SJP's poor practice, as I've already identified. I do accept that those failings would've been more keenly felt because of her circumstances at the time.

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

“You have pointed out and highlighted SJP’s “significant failings”, “another troubling failure” and that 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” to Mr and Mrs W. It is worth pointing out that Mrs W’s Wealth Account report from SJP for the years ended 31 December 2019, 2020 & 2021 show total annual SJP charges (excluding Fund transaction charges) applied of £36,559, £32,299 & £37,177.32 respectively.”

“In addition on account of the loss of trust and ongoing Ombudsman complaint Mrs W felt she had no option but to transfer her SJP ISA investment, Unit Trust Investments and her SIPP investment to a new financial advisor...She incurred a SJP 3% early exit charge of £5971.63 for transferring her SIPP to ...in October 2023...”

I think there are two distinct matters here.

The first appears to be a question about the services Mrs W received from SJP in recent years. The complaint she raised in March 2023 concerned the matters 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 that scope. Should she have any concerns about the services SJP provided her between 2019 and 2021, then in the first instance she should detail these and address them to the firm so that it has an opportunity to respond.

With regards Mrs W’s decision to move provider, I think it’s helpful to reflect on the content of her communication with SJP on this matter from December 2022, before she raised her complaint:

“[Dear Mr Y, Given all that has gone on this year, I have decided that it is a good moment to start afresh in 2023. Therefore I will be moving all my investments from St James's Place to [...] early in the New Year. [My husband's] portfolio will also be moved across to [...], I assume this can be done once probate has been granted which should be in February / March 2023. I am not sure yet what [my children] will decide to do.

You have looked after us incredibly well over the past years and I thank you enormously for all your sage help and advice.”

I think it’s more likely than not Mrs W would’ve moved her accounts elsewhere irrespective of her complaint. And I think she was fully aware of the costs she would incur as a result.

Putting things right

As I’ve established, any financial detriment arising as a result of SJP’s failings in this case would impact on Mrs W’s children. Of course, these are matters appropriate for me to decide for each of Mrs W’s children on their individual cases. Indeed, to be clear those decisions will cover not only the way they had to take the tax-free share of benefits from their father’s RA wasn’t as it should’ve been, but also to address complaint points raised about the level of service they received from SJP’s adviser, their lack of experience of financial matters and their vulnerability.

Since Mrs W’s complaint was initially brought jointly with her children and many of her concerns naturally centred around the impact on them, I thought it would be helpful to her to understand my approach and current thinking, which in turn provides some context for my proposed resolution of her own complaint.

SJP made an offer to Mrs W to settle her complaint. It’s rationale and proposal was as follows:

“As indicated above, 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 [dependents FADs]

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. These amounts are in line with what I believe the Financial Ombudsman Service would expect us to offer in regard to any delay and trouble & upset which may have been caused. This brings my total offer to £450.”

Mrs W rejected SJP’s offer.

As I’ve mentioned, given my findings and conclusions, considering any financial detriment resulting from SJP’s key failings is a matter to be dealt with in the complaints raised by her children.

When I’m considering a complaint like Mrs W’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.

St. James’s Place Wealth Management Plc proposed an award that failed to recognise some of the failings I’ve identified. And I don’t think it gave appropriate weight to her circumstances at the time. With these matters in mind I require it to pay Mrs W £750 in recognition of the distress and inconvenience it caused her as a result of what it got wrong.

My final decision

For the reasons I’ve set out, I’m upholding Mrs W’s complaint and I 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 Mrs W to accept or reject my decision before 29 October 2024.

Kevin Williamson

Ombudsman