

The complaint

Mrs S has complained about the advice she was given by St. James's Place Wealth Management Plc regarding benefits she'd been awarded through a Pension Sharing Order (PSO). Mrs S considers the advice was unsuitable for her objectives.

What happened

Mrs S' complaint was considered by one of our investigators. He issued his assessment of it to both parties on 10 September 2024. The background and circumstances to the complaint were set out in that assessment. However to summarise, Mrs S wanted advice about a PSO made against her ex-husband's pension. There wasn't an option to leave funds in the scheme, so she had to transfer it.

Mrs S sought advice from a St. James's Place Wealth Management Plc ('SJP') adviser who'd she'd invested with going back to 2016. In a suitability report dated 22 May 2022 (SJP say this was sent to Mrs S after the decree absolute was granted on 21 September 2022 – Mrs S says she never received it), the SJP adviser recommended Mrs S transfer her part of the pension to a new plan with SJP. The suitability report recorded that discussions had been held on 24 February 2022, and Mrs S had said she believed the earliest age she would need to access her pension was 65.

The Suitability Report with accompanying documents sent with it set out the charges that would be applied to the investment on a yearly basis, for setting up the plan and in the event funds were moved away in the first six years. A transfer value of approximately £469,050 was received by SJP in January 2023. The adviser e-mailed Mrs S on 1 February 2023 to confirm the transfer value was invested.

In May 2023 Mrs S asked the SJP adviser to send copies of documents relating to the advice she'd been given. Mrs S subsequently submitted a complaint to SJP in June 2023. She said she'd understood the transferred funds would be moved to a "holding account" until she'd looked at her total pension provision and considered when she would be able to retire. Mrs S was concerned to find the transfer seemed to have been invested in a "fixed pension" fund which she was tied to for at least six years, with early withdrawal charges for moving it elsewhere. Mrs S said she had never received the suitability report, the charges had never been properly explained to her and she was concerned about the high ongoing costs.

Mrs S also said the CFR contained out of date, incorrect and contradictory information about her, and her needs and objectives had not been recorded correctly. She thought the pension hadn't been invested in a way tailored to her specific needs.

Mrs S said she had never categorically stated she would only retire at 65, saying the conversation had always been she would wait until the PSO transfer came through before assessing her pension savings overall.

SJP didn't uphold Mrs S' complaint.

Our investigator didn't recommend that Mrs S' complaint should be upheld. He said, in summary, that whether Mrs S' retirement age was agreed to be 60 or 65, he'd expect the transferred amount to be invested to some degree. He said if it had been left in what had been described as a holding account its value would be eroded by increases in the cost of living. And he said the actual investments were invested at medium risk, which he thought was reasonable for Mrs S' circumstances.

The investigator noted Mrs S had said she hadn't received a copy of the suitability report until she had requested copies of documentation relating to the transfer in May 2023. The investigator said SJP had said its adviser had met with Mrs S to talk through the suitability report on 25 May 2022 (the report was dated 22 May 2022). And although SJP had said the suitability report hadn't been posted to Mrs S until 21 September 2022, once the decree absolute was issued, which wasn't ideal, he said he could understand why the adviser would have done this as the alternative would have been to delay the advice altogether until the decree absolute was granted.

The investigator said the adviser's handwritten notes dated 25 May 2022 said the PSO had been approved, and referred to a discussion about Mrs S' defined benefit pension scheme. The investigator said he could see that SJP wrote to Mrs S on 24 August 2022 referencing the face-to-face meeting held on 25 May 2022. So he thought it was likely a meeting took place on that date. And that as the suitability report was dated 22 May 2022 he thought it also likely it was the main subject of that meeting.

SJP had also said a Client Declaration for transfers form had been posted to Mrs S with the suitability report on 21 September 2022. And that the signed Client Declaration form had been sent back to it dated 26 September 2022. So the investigator said he thought it was likely the suitability report had been sent to Mrs S on 21 September 2022, before the transfer had been requested.

The investigator thought that during discussions about the suitability report and its enclosures it would have been clear that the SJP plan was being set up with a selected retirement age of 65. The investigator said the plan wasn't however "fixed", in that Mrs S couldn't access her benefits. But he acknowledged that some charge could apply if Mrs S accessed her benefits within a six-year period of transferring. The investigator also thought the suitability report and illustration made clear funds would be invested on receipt of the transfer value rather than being placed in a "holding account".

The investigator said he accepted the final transfer value from the PSO wasn't known when the advice was given in May 2022, or when the paperwork was signed in September 2022. He said he could understand that knowing the final PSO transfer value could have been a consideration in whether to transfer the defined benefit scheme. But he said he couldn't see any value in holding the transfer value from the PSO in some sort of cash account while the decision on the defined benefits was made. The investigator said SJP's central administration centre sent a letter to Mrs S on 30 January 2023 with an investment certificate showing the PSO value had been invested in a range of SJP funds, rather than any holding account. So he thought it would have been clear the funds were being invested.

The investigator said the suitability letter and illustration set out the charges for the SJP plan. This included the annual charges, which included the costs of an ongoing advice and review service. He said the plan had an early withdrawal charge (EWC) if funds were removed in the first six years, and this reduced by 1% each year. He said the handwritten notes included a diagram of how the EWC worked, which SJP considered showed the charges had been discussed with Mrs S. The investigator said that although he thought the diagram provided a good pictorial explanation of the EWC, his understanding was that it had been discussed during a Zoom call on 14 April 2022, and he didn't know how it may have come across in

that format.

The investigator explained how charging structures worked more generally, and that all firms charged for the advice they provided. He said charges could be made upfront, or through deductions taken from the product recommended. He said the SJP illustration showed the initial charge for the advice was 4.5%, and 1.5% for setting up the product.

The investigator explained that most firms would deduct their initial charge at the start, so a smaller amount would be initially invested. However that no "charge" would be made to access the funds. The investigator explained that SJP charged differently, and instead of deducting initial charges from the amount originally invested they invested the full amount received but then recouped the charges over time. However, that SJP applied an EWC to funds withdrawn in the first six years.

The investigator said if Mrs S withdrew her funds in their entirety after three years the EWC would be 4% - so similar to an equivalent charge if made at the outset. He also said SJP allowed yearly withdrawals in the first six years of 7.5% of the fund value with no EWC applying.

The investigator noted Mrs S had said the Client Financial Review (CFR) form contained out of date, incorrect and contradictory information about her, and her needs and objectives had not been recorded correctly. The investigator said his understanding was that SJP used the CFR as one document for a client that was then updated over the course of their relationship. He said he didn't think the updates always happened and only some things got updated. This could mean there was information in the CFR that was no longer correct or was out of date. The investigator said he understood this was frustrating and annoying. However, he didn't think it had led to the advice Mrs S received being unsuitable.

Overall, the investigator said he thought the documentation provided to Mrs S made clear the investment term was to 65, and that there would be a EWC in the first six years. So he didn't recommend that SJP waived the charge.

Mrs S didn't accept the investigator's findings. She said, in summary, that she wanted to make clear that her complaint was about the suitability of the SJP product and that she didn't think it was suitable to meet her objective of retiring within two years. She said she was tied to a product that carried penalties if she wanted to transfer the funds before she was 65. She said SJP hadn't properly explored her objectives before the money had been invested, or provided appropriate forecasts and options for her individual circumstances. Mrs S said the option of an annuity had never been explained in detail or proposed as an option before the money had been invested – the adviser had only talked about discussing her pension options after the transfer had been completed, so she would know the final sum invested.

Mrs S said she had asked to see the fact find recording her objectives, and SJP couldn't produce one. So she questioned how SJP could demonstrate that the advice provided had met those objectives. Mrs S said the adviser didn't seem to understand or take into consideration that she was in an extremely vulnerable situation, as she was going through a very hostile and difficult divorce. She had no experience of dealing with pension funds.

Mrs S said she thought the advice had resulted in her having very limited options with the pension until she was 65. She said she had never said she would work until age 65 – her intention had always been to retire at age 60 if she could afford to. She now faced unnecessary withdrawal penalties if she wanted to access her whole pension at age 60 to buy an annuity. She said the divorce and now the complaints process had been very stressful, and she was running out of time to consider her options prior to retirement in 2025.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so I've come to the same conclusions as the investigator, and largely for the same reasons.

I do understand that Mrs S' complaint is about the suitability of the SJP product; she says she doesn't think it was suitable to meet her objective of retiring within two years and she would face unnecessary penalties if she wanted to withdraw the whole sum and buy an annuity at age 60.

As the investigator explained, Mrs S is able to make annual withdrawals from her plan of up to 7.5% a year. Given the transfer value at the time, that would have been around £35,000. So if Mrs S wanted to take a yearly income of below the 7.5% flexibly, the EWCs wouldn't impact - even if Mrs S wanted to retire prior to the six- year period that the EWC's applied.

I accept however, that if Mrs S wanted to withdraw the whole sum and buy an annuity at age 60 that would result in charges. And there would also be charges on any excess withdrawn flexibly above the 7.5%. Mrs S has also raised concerns about the reliability of the information recorded in the fact find and said it doesn't record her objectives.

The investigator explained why there might be inconsistencies in the fact find, and although that's not a very satisfactory position and I understand why it would cause Mrs S to have doubts about the advice she was given, I don't think the inconsistencies resulted in Mrs S being given unsuitable advice. I think what was more significant was that her objectives at retirement weren't recorded in the fact find.

On the one hand the evidence suggests the adviser had a number of discussions with Mrs S about the pension. And the suitability letter recorded that Mrs S had said she believed the earliest possible age she would need access to the funds was 65. However on the other, as I've said, the fact find doesn't record Mrs S' objectives at retirement. Clearly I can't determine with any reasonable degree of certainty exactly what the adviser discussed with Mrs S. However, where evidence is inconsistent or incomplete, I have to make a decision on the balance of probabilities; that is what I think was more likely on the balance of the evidence available. For the reasons set out by the investigator, I think it was more likely than not that SJP did send the suitability letter and accompanying documents to Mrs S prior to the transfer taking place. And so I think Mrs S likely had the opportunity and ought reasonably to have alerted SJP that it had wrongly understood her intentions for her retirement date if that had been the case.

SJP also sent Mrs S a letter dated 30 January 2023 which referred to other documents it said Mrs S would have previously received - the Key features, personalised illustration and Key facts about the cost of our services document. On the face of it these would have appeared to be important documents – Key Features and Key Facts about the costs. It would seem likely that Mrs S would have questioned this with SJP if she hadn't received them. I accept that Mrs S may not have noticed and could have had more important matters on her mind – I realise she'd gone through a difficult divorce and the associated stresses and anxiety caused. However overall I think the evidence suggests, on balance, it's more likely than not that Mrs S was reasonably alerted to the charges associated with the transfer.

Given I think Mrs S was likely alerted to and accepted the quantum of the charges, I don't think it follows that the EWCs in themselves made the advice unsuitable. The PSO had to be transferred out of the previous scheme. So this wasn't a case where a client was wrongly

advised to transfer schemes incurring charges that wouldn't otherwise have been incurred. Mrs S had sought advice, and was always going to incur some charges in the transfer process.

As the investigator explained, most firms charge fees upfront, but then don't have EWCs. By the time that Mrs S has said she wants to take her benefits the EWCs will be 4%, and the charges taken percentage wise not dissimilar to if SJP had applied its charges upfront. The EWCs will only apply in the circumstances I've described above. From what Mrs S has said, I understand she hasn't made any firm decisions about how she is going to take her benefits, so it's not entirely clear if the EWCs will be material in any event. But ultimately, I don't think the way the charges were applied made a significant difference to their overall impact on Mrs S.

I do appreciate that Mrs S was in a vulnerable position, and I accept this could have affected her ability to function and focus. However, as I've said, Mrs S was always going to incur charges as she had to transfer her share of the pension. And I don't think the product recommended was unreasonable even taking her objectives into account. Overall, having carefully considered all the circumstances, for the reasons set out above and by the investigator, I'm not persuaded that the advice she'd been given was unsuitable in the particular circumstances of the case.

My final decision

My final decision is that I don't uphold Mrs S' complaint.

My understanding is that SJP made an offer to Mrs S of £250 for the way in which it dealt with her complaint. I'm not sure if that has been paid to Mrs S. However if it hasn't, and Mrs S wants to accept that offer, she should contact SJP direct.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 31 December 2024.

David Ashley
Ombudsman