

## **The complaint**

Mrs N complains that St James's Place Wealth Management Plc (SJP) unfairly cancelled one of the plans she held with it without value. And that it inappropriately invested that plan and the other plan she held with it.

## **What happened**

Mrs N had two Additional Retirement Plans (ARPs) with SJP, which I'll refer to as plan 1 and plan 2. They both had a Selected Retirement Age (SRA) of 55.

### *Plan 1*

Plan 1 started on 2 April 1993. Mrs N made contributions of £250 each month until 1 June 1994. SJP then wrote to her to explain that it would apply a charge if she didn't resume contributions within three years. As Mrs N made no further payments, SJP deducted a charge of £8,705.49 on 1 July 1997. It also noted it would've continued to deduct an Annual Management Charge (AMC) to cover the ongoing administrative and management costs associated with the ARP. It said that the one-off charge and the AMC deductions had led to the value of Mrs N's ARP reducing.

SJP said that it'd provided Mrs N with details of the charges applicable to her ARP.

### *Plan 2*

SJP said it'd written to Mrs N on 5 November 2004 to provide her with options after she'd gone past her SRA. It said that she'd returned her signed and dated Options form on 8 February 2005. And that this had confirmed that she wanted to extend her SRA to 60. SJP said that Mrs N hadn't ticked the appropriate box for her plans to remain invested in the existing funds. Therefore her plans were transferred into the Money Market fund on 19 March 2005.

Mrs N said she didn't follow up with SJP about her plans until January 2019. She said it told her that plan 1 had been closed due to no further contributions and plan 2 had achieved very low investment return as it'd been invested in the Money Market fund. So she raised a complaint.

SJP issued its final response to the complaint dated 23 March 2019. It said that while it'd applied all the charges correctly and in line with the Terms and Conditions, it couldn't be sure Mrs N had understood the consequences of the one-off charge it'd applied in July 1997, or the switch of her plans to the Money Market fund in March 2005.

SJP offered to arrange to reinstate plan 1, by waiving the charges retrospectively and assuming the funds had remained invested in Mrs N's existing funds until 1 February 2019 when plan 2 was switched into the Balanced Portfolio. It assumed that switch would've taken place in plan 1 too. It said this would increase the value of plan 1 to £23,255.74 as at 21 March 2019.

SJP offered to adjust plan 2 as if the funds hadn't been transferred to the Money Market fund in March 2005. It said this would increase the value of plan 2 from £24,236.80 to £58,525.95 as at 21 March 2019.

SJP asked Mrs N to sign a letter of acceptance of its offer.

Mrs N said that she emailed SJP on 30 May 2019. She explained that she was going through a personal tragedy. She wanted to know why plan 1 had notionally performed far worse than plan 2. But said she'd accept both offers in principle.

Mrs N said she would've signed the letter of acceptance more or less immediately if it hadn't stated that the payment would be made into her bank account. She questioned whether SJP was proposing to pay the redress as cash or into her Self-Invested Personal Pension (SIPP).

On 3 June 2019, SJP replied to explain that it intended to adjust the units in Mrs N's plans, after which she could do whatever she wanted with the funds.

Mrs N emailed SJP again on 5 November 2019 as she felt it hadn't replied to her May 2019 email. She asked it to update its offer to reflect the appropriate growth since the end of March 2019. She also asked it to send her a new letter of acceptance.

SJP replied to Mrs N the same day. But it only sent her a copy of the 3 June 2019 email, which Mrs N said she didn't receive until November 2019. Mrs N said that the person who had received her email let her know that they'd left the Client Liaison team, but would make that team aware of Mrs N's latest email.

Mrs N said that although the 3 June 2019 email included an apology for incorrect text included on the letter of acceptance, she'd never been able to open the attachment.

SJP said that it asked its Actuarial Department for updated hypothetical values on 8 November 2019, so that it could make Mrs N an updated offer. But despite sending several chasing emails up to March 2020, it had never received the updated values.

Mrs N said that she had personal issues which meant that she didn't call SJP until December 2023 about the fact that her 2019 complaint still hadn't been resolved. She said she then raised a formal complaint on 3 January 2024.

Mrs N wanted SJP to reinstate the performance for each of her plans. She said she would then consult with her financial adviser about what to do with them after that.

SJP acknowledged Mrs N's complaint on 1 February 2024. Later the same month it told her its review of her complaint was still ongoing. And said she could refer her complaint to this service. Mrs N chased for a response on 8 March 2024. SJP responded on 27 March 2024 to say the investigation was still ongoing.

Mrs N said she emailed SJP on 2 May to find out what was going on. She said she was shocked to find out that her complaint was yet to be allocated.

Mrs N brought her complaint to this service on 30 May 2024. She said she was both worried and stressed that her pension plans were technically worth so little. She was concerned about how she would manage in future. And said that the stress of the last few months had had a significant effect on her health.

Mrs N felt that SJP had failed to keep her properly informed. She also felt that it'd mismanaged her funds. To put things right, she felt SJP should correct her account as it'd

agreed to do in 2019. She also wanted SJP's calculations to be checked by a professional.

Mrs N felt that SJP had been seriously irresponsible with its original handling of her complaint in 2019, noting that the handover from one departing staff member had failed completely. She felt SJP had then lied to her several times in 2024 about the progress it'd made with her complaint. She felt that SJP should be fined at least £100,000 for its failings.

SJP gave this service its consent to consider the complaint. It said it'd asked its Actuarial Department for updated hypothetical values for both plans. And that it was willing to update the offer using the same approach as it'd been taken in 2019. It said it was likely to take several weeks for its Actuarial Department to produce the calculations.

Our investigator told Mrs N what SJP had offered to do. But she was reluctant to give SJP more than eight weeks to consider her complaint given what had happened. She also said she still wanted any figures SJP produced to be verified.

On 1 August 2024, SJP shared its offer for financial redress with this service. It said that although it'd originally effectively offered to pay the redress into Mrs N's pension, its procedures had changed. It was now offering Mrs N cash compensation in order to avoid creating any tax adverse implications from increasing the value of her pension.

The calculations showed that Mrs N's plans should've been worth a total of £72,254.96 more than their 23 July 2024 value. It offered Mrs N financial redress of £61,416.72 after allowing for basic rate income tax on 75% of the fund. It said the offer was contingent on Mrs N providing it with a certified copy of her marriage certificate.

Mrs N had the following questions about SJP's offer:

- She wanted to know why plan 1 and plan 2 had such difference performance. And specifically why plan 2 appeared to have notionally increased by more than plan 2.
- She asked if her plans would still exist if she accepted the offer, and if she could then transfer the plans elsewhere. If so, she wanted to know if she'd still be able to take a 25% Tax-Free Cash (TFC) lump sum.
- Mrs N also wanted to know if she could instead take 25% TFC from both plans and then have the rest of her funds reinstated to the level offered, when she could then transfer those funds to a provider of her choice. She felt this would mean she wouldn't have to pay any income tax on the balance.
- Mrs N wanted SJP to pay her compensation for the distress and inconvenience caused. She felt her complaint should've been resolved in 2019. And also felt that SJP had lied to her in 2024 when it'd told her it was investigating her complaint when it hadn't even allocated it.
- She didn't think it was necessary to provide SJP with a certified copy of her marriage certificate as most of her pensions and bank accounts were still in her maiden name.

Our investigator told Mrs N he couldn't answer her question about performance. He shared Mrs N's questions with SJP.

SJP shared details of the calculations its Actuarial department had conducted with our investigator. It asked to see copies of some of the documents Mrs N had referenced, stating that a photo of the documents would be acceptable.

SJP also reconfirmed its offer and method of redress, noting that its procedures had changed since its 2019 offer. It said it would only pay the redress directly to Mrs N. It also offered Mrs N £500 for the distress and inconvenience it'd caused.

Mrs N didn't think that SJP had answered all of her remaining questions. She still wanted to know why one of her plans had performed so much better than the other, despite investing roughly similar amounts in both plans. She noted that her plans' performance would depend on the starting amount of the fund and the date and value at which each plan was reinstated. And said that it would be helpful for SJP to provide information on this.

Mrs N also felt that our investigator hadn't considered her point that SJP had lied to her when it'd told her more than once that her complaint was under investigation when it hadn't even been assigned.

Our investigator asked SJP for further information on 20 September 2024. But it didn't reply. He therefore reached his view on the basis of the information available to him.

Our investigator noted that SJP had offered to pay Mrs N:

- a cash payment equivalent to uplifting her plans' values as at 23 July 2024 by £29,665.60 to £29,665.60 and by £42,589.36 to £72,693.06, respectively. This is a total difference in fund values of £72,254.96.

Allowing for the difference in fund values to be considered as a 25% TFC lump sum of £18,063.74, and with the remainder taxed at 20%, SJP offered to pay Mrs N £61,416.72.

This offer was contingent on Mrs N providing SJP with a certified copy of her marriage certificate.

- £500 compensation for the distress and inconvenience caused.

Our investigator felt that SJP's offer was fair and reasonable. But he said that this service wasn't able to check the figures SJP had produced. He also felt that SJP hadn't explained why it couldn't pay the financial redress into Mrs N's pension. And therefore it ought to be up to Mrs N to choose whether the redress was paid as cash or into her pension, subject to the usual potential conflicts. Our investigator also felt that SJP had made a reasonable request to see a certified copy of Mrs N's marriage certificate.

Mrs N didn't agree with our investigator. She wanted SJP to do the following:

- Add interest to the financial redress offered to cover the period from July to November 2024.
- Pay the redress into her new SIPP. She felt this should be a total of £29,665.60 and £72,693.06, both plus interest.
- She didn't feel there was any need to provide SJP with a copy of her marriage certificate as she noted her new SIPP was in the same name as her account with SJP.
- Pay her an £500 additional compensation.

Mrs N also wanted this service to remonstrate with SJP as she felt it'd lied to her several times between January and May 2024 about the fact that it was investigating her complaint when it had yet to be allocated.

Our investigator told Mrs N that complaint handling wasn't a regulated activity. So it wasn't something we had the power to consider. He also felt that SJP's request for Mrs N's marriage certificate was reasonable, but said he would ask it if it would make the redress payment without it.

Our investigator then shared Mrs N's request with SJP. He felt it was reasonable for SJP to add further interest to the redress from July to November 2024.

SJP didn't agree that it should add further interest. It felt that our investigator had agreed that its offer of redress was fair. Therefore it said it didn't expect him to direct it to update its calculations. It also reconfirmed its position was that it would pay the redress directly to Mrs N. And that it would need the requested marriage certificate before it would do so.

In light of this, our investigator then further considered the complaint. Having done so, he felt SJP's offer was fair.

As agreement couldn't be reached, the complaint came to me for a review. I asked SJP to further explain why it felt it couldn't pay the financial redress to Mrs N's new SIPP.

SJP said the following:

*"To put funds into [Mrs N's] pension could compromise the tax treatment of the fund, as it will be considered a pension contribution in the eyes of HMRC.*

*The standard Annual Allowance is £60,000 (which this compensation amount exceeds), so if there was no carry forward allowance, then placing compensation into the pension could create adverse tax consequences on the client (i.e. Annual Allowance Charges).*

*We also note that the client is aged 69 and should she have already flexibly accessed benefits, then she would be restricted by the Money Purchase Annual Allowance of £10,000 (as opposed to the standard Annual Allowance of £40,000) with no carry forward facility.*

*It therefore doesn't make sense for the client to place the funds into her pension and create adverse tax consequences which can otherwise be avoided.*

*FOS guidance allows firms to pay compensation on a pension complaint in the form of cash, with an adjustment for tax to mirror what would likely have happened when the client took benefits in retirement. We have acted in accordance with this guidance."*

SJP also said that it'd previously discussed this issue with this service. It referenced a previous case as evidence of this service's acceptance of its position on this issue.

As agreement couldn't be reached, the complaint has come to me for a review.

### **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 agree with our investigator that the financial redress SJP has offered Mrs N is fair under the circumstances of this complaint. Therefore, while I uphold the complaint, I'm not going to ask SJP to take any further steps to put things right. I know this will be disappointing for Mrs N. I'll explain the reasons for my decision.

I first looked at what went wrong.

### *What went wrong?*

From what I can see, SJP first made its offer of financial redress in 2019 as it said it couldn't be sure that Mrs N understood the consequences of the one-off charge it'd applied to plan 1 in 1997. It said the same thing about the switch of both plans investments to the Money Market fund in March 2005.

SJP hasn't provided this service with a copy of the terms and conditions of plan 1. But I've no reason to doubt that the one-off charge was applied in line with the terms and conditions of the plan after Mrs N had ceased contributing to it.

SJP hasn't provided this service with a copy of the 2005 Options form it said Mrs N completed. But again, I have no reason to doubt that Mrs N didn't tick the appropriate box to confirm how she'd like her funds to be invested. This led to the investments in both of her plans being switched to the Money Market fund.

From what I can see, while SJP didn't technically do anything wrong, as it said it acted in line with the plans' terms and conditions, it made its offer of redress on the basis that Mrs N might not have understood the consequences of those actions.

I next looked at what SJP offered to do to put things right.

### *What did SJP offer to do?*

In 2019, SJP offered to put Mrs N's plans back into the position they would've been in if the one-off charge hadn't been applied to plan 1 and if both plans had been properly invested.

I think this is a fair and reasonable approach to take. And I can't fairly say that I would've expected SJP to do more than this under the circumstances.

From the evidence provided, I think it's more likely than not that Mrs N would've accepted the offer in 2019 if the wording in the letter of acceptance had been correct. And if she'd read the 3 June 2019 email SJP sent in response to her queries about the offer. Unfortunately, Mrs N said she didn't get that email until November 2019. At this point, she asked SJP to update its previous offer given seven months had passed since it had first made it.

The complaints team at SJP seems to have agreed to do this, as the evidence shows that it asked its Actuarial Department for updated figures on 8 November 2019. But that department didn't respond to the chasers the complaints team sent. It wasn't until December 2023 that Mrs N called SJP because her 2019 complaint still hadn't been resolved.

It's clear that both SJP and Mrs N could've contacted each other sooner. I understand that Mrs N has faced difficult personal issues over the period in question. And it appears that SJP has allowed Mrs N's original complaint to go unresolved for so long due to a key member of staff leaving. This is clearly poor service.

The evidence shows that SJP didn't respond quickly to Mrs N's 2024 complaint. And that it told her it was dealing with her complaint when it hadn't yet been allocated to a member of staff. This has clearly caused a great deal of upset for Mrs N. I'll cover the distress and inconvenience element of this complaint later in my decision.

SJP issued its updated offer on 1 August 2024, based on fund values as at 23 July 2024.

Although its 2019 offer allowed the redress to be paid into Mrs N's pension, its procedures had since changed. Therefore its 2024 offer was that the financial redress would be paid to

Mrs N as cash to avoid any tax adverse implications for Mrs N. SJP said that it:

*“...would apply a hypothetical taxation calculation to the redress – the first 25% is paid free of any deduction (like you would for PCLS), and the remainder of the redress is subject to a deduction that assumes hypothetical basic rate tax.”*

Mrs N would like SJP to pay the financial redress into her new SIPP, rather than as cash, part of which would effectively be taxed. So I've gone on to consider this point.

*How should the financial redress be paid?*

I acknowledge that Mrs N would like the redress to be paid into her new pension. However, SJP's normal procedure is to pay redress directly to consumers to avoid creating any adverse tax implications for them.

SJP's calculation of the redress it has offered is based on 25% of the redress being paid as a TFC lump sum, with the remaining amount being paid to Mrs N after notional income tax of 20% has been deducted.

Generally, where there's evidence that a business has caused a financial loss within a pension, we would ask it to pay any financial redress into the consumer's pension plan unless it would conflict with any existing protection or allowance.

SJP said that being told to make the payment directly into the pension isn't consistent with decisions it'd previously received from this service. I agree that we wouldn't usually force a business to pay into a consumer's pension if it didn't want to.

SJP has explained that if it paid the financial redress into Mrs N's pension, this could compromise the tax treatment of the fund. It specifically noted that the redress is in excess of the standard Annual Allowance of £60,000. Therefore, ignoring any potential carry forward allowance, paying the redress into the pension could create adverse tax consequences for Mrs N. It also said that given Mrs N's age, she could be subject to the much lower Money Purchase Annual Allowance of £10,000, with no carry forward facility.

For these reasons, SJP said it didn't make sense to pay the financial redress into Mrs N's pension. SJP has also confirmed that the process it'd like to follow is its usual process.

I've carefully considered both positions. Having done so, I'm persuaded that SJP can fairly pay the financial redress to Mrs N as cash.

While I acknowledge that Mrs N feels that having the redress paid into her pension would mean she wouldn't have to pay any income tax on the balance after any TFC payment, I'm not persuaded that she'll be significantly worse off in the long run if the redress is paid to her as cash. I say this because in any event, at the point Mrs N accessed her pension, she'd be taxed at her marginal rate.

I can't reasonably ask SJP to change its normal processes unless I consider they are unfair. But in this case, I'm satisfied that SJP's reason for not paying any redress directly into Mrs N's pension is fair and reasonable.

I next considered whether SJP should pay interest on the financial redress to cover the period from July 2024, when its calculations were carried out, and the present time.

*Should SJP add interest to its July 2024 calculations?*

While I know Mrs N will be disappointed by this decision, based on everything I've seen, I'm of the view that the offer SJP made on 1 August 2024 is fair and reasonable. I say this because I'm satisfied that the offer did put Mrs N as close as possible back to the position she should've been in at the point that the offer was made.

I'm satisfied that the offer on interest was in line with what this service would've otherwise suggested at that time. And that it therefore wouldn't be fair or reasonable to require SJP to continue to cover investment return for Mrs N after that point.

I next considered whether Mrs N should have to provide SJP with a copy of her marriage certificate.

*Should Mrs N need to provide SJP with a copy of her marriage certificate?*

I've carefully considered Mrs N's point about why she feels this isn't needed in her case. And while I understand her position, I don't consider SJP's request is unreasonable. I can also see that Mrs N does have the document SJP has asked for. Therefore I can't fairly ask SJP to waive this requirement.

I finally considered the distress and inconvenience caused.

*Distress and inconvenience*

I can see that this has been a stressful and frustrating process for Mrs N over a period when she's gone through a number of personal tragedies. I therefore don't doubt that she's been through significant distress and inconvenience over recent months. And that SJP has been responsible for that distress.

Mrs N would like SJP to pay her £500 additional compensation for the distress and inconvenience it's caused her. She felt her complaint should've been resolved in 2019.

I agree with Mrs N that her complaint should've been resolved in 2019. But I think that both parties are in part responsible for that not being the case. I say this because I'm persuaded that SJP did send its 3 June 2019 email to Mrs N but that she didn't read it until November 2019. I think that if she had picked up that email in June 2019, the complaint could've been resolved shortly after.

The evidence shows that SJP failed to properly follow up the resolution of this complaint. I can see that the complaints team did try to get updated redress figures in November 2019, but it seems to have stopped trying in March 2020. SJP hasn't explained why this happened.

However, there's no evidence that Mrs N was chasing SJP up for the resolution until December 2023. Overall, I can see that it took SJP around seven months from Mrs N's chaser in December 2023 to make its updated offer.

After sharing that offer with Mrs N, SJP also offered to pay her £500 compensation for the distress and inconvenience caused.

This service considers that compensation of this level might be fair where the impact of a business's mistake has caused considerable distress, upset and worry and/or significant inconvenience and disruption that needs a lot of extra effort to sort out. Typically, the impact lasts over many weeks or months. I therefore think that the £500 SJP has offered Mrs N is fair under the circumstances of the complaint, as it's in line with what I would've otherwise recommended.



## **Putting things right**

I require St James's Place Wealth Management Plc to take the following steps to put things right:

- Pay Mrs N the total difference in fund values, after adjustment for notional TFC and income tax, of £61,416.72.
- Pay Mrs N £500 compensation for the distress and inconvenience caused.
- Mrs N must provide St James's Place Wealth Management Plc with a certified copy of her marriage certificate.

If payment of compensation is not made within 28 days of St James's Place Wealth Management Plc receiving Mrs N's acceptance of my final decision, interest must be added to the compensation at the rate of 8% per year simple from the date of my final decision to the date of payment.

Income tax may be payable on any interest paid. If St James's Place Wealth Management Plc deducts income tax from the interest, it should tell Mrs N how much has been taken off. St James's Place Wealth Management Plc should give Mrs N a tax deduction certificate in respect of interest if she asks for one, so she can reclaim the tax on interest from HMRC if appropriate.

## **My final decision**

For the reasons set out above, I uphold Mrs N's complaint. St James's Place Wealth Management Plc must take the action detailed in "Putting things right" above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs N to accept or reject my decision before 4 February 2025.

Jo Occleshaw  
**Ombudsman**