DRN-5195713

The complaint

Mr S complains he was given unsuitable advice by St James's Place Wealth Management Plc to transfer his two personal pensions to a retirement account and into investments he says were too high risk.

Mr S is represented in this complaint by a claims management company, although for ease of reading I'll attribute their comments to Mr S.

What happened

In March 2010 Mr S sought advice from Mr H a partner with St James's Place Wealth Management Plc ("SJP") to review his pension provision.

The adviser completed a fact find of Mr S's financial and personal circumstances, which noted he was aged 47, married but separated, with three adult children. He was a director of a family business, with annual income of £76,000, of which £30,000 came from his employment, and owned a property with an outstanding mortgage of £200,000.

He had two personal pension plans, one with provider "S" (valued at around £73,240 made up of protected and non-protected rights), and the other with provider "P" (valued at around £12,500). Mr S was intending that month to make an employer pension contribution of £15,000. His attitude to risk ("ATR") was assessed as "medium" (3/5), and he intended to retire at age 65 in 2029.

Mr S was also the trustee of a small, self-administered scheme (SSAS) held with another provider valued at around £20,000 to which he was contributing, which doesn't form part of this complaint.

The adviser recommended Mr S open a SJP retirement account ("RA") and transfer in the S plan to be invested in its Managed Funds portfolio. It was decided not to transfer the P plan at this time, due to the guarantees which would be lost.

The suitability report from April 2010 included a comparison table which showed the SJP plan was more expensive than the S plan, but the adviser was confident the higher charges would be outweighed by superior performance. The SJP plan would only need to outperform the non-protected rights element of the S scheme by 0.4% and 0.3% for the protected rights element to match the benefits at retirement, which appeared reasonable. Mr S was warned of some disadvantages of switching from S to SJP, individual fund charges were higher, he'd lose the benefit of free switching, the choice of funds was narrower, and SJP applied exit penalties for the first six years diminishing from 6% to 1% in year six. Mr S was provided with SJP's guide explaining its approach to assessing attitude to risk, and the investment choices available for each.

Mr S accepted the advice, signing the transfer authority and SJP's client declaration in July 2011. The S plan was transferred to his SJP RA and invested in their Managed Funds portfolio comprising of seven different funds, with no more than 15% in each.

At the 2013 review Mr S told the adviser he wished to commence regular employee pension contributions. He was given SJP's guide explaining the relationship between risk and reward and was confirmed as a medium risk investor.

At the 2014 review the adviser updated some details in the fact find in relation to Mr S's address, his income which had increased to over £120,000, and his mortgage, life and critical illness cover. Mr S was making monthly contributions of £500 to his SJP RA and intended to make a further employer contribution of £15,000. The adviser reviewed the P plan which Mr S felt had been overlooked over the years. It had higher charges than the SJP plan at 1.45%, due to the additional 0.5% charge for its "*Guaranteed Minimum Fund*" ("GMF") worth around £14,697 by March 2024. The plan also offered two discounts to reduce the annual management charges. A loyalty discount which reduces the charges if held for five (0.05%), ten (0.1%), fifteen (0.2%) or twenty years plus (0.25%), and a large fund discount which ranged from 0.1% for a fund value over £25,000, up to 0.3% if the plan grew to £250,000. But the overall discount would be capped at 0.55% if both discounts applied. The adviser considered Mr S was unlikely to benefit from the maximum combined discount as he was no longer contributing to the plan. And even if he achieved the maximum loyalty discount of 0.25% by holding on to the plan for more than 20 years, this would only reduce the AMC from 1.95% to 1.70% which would still be higher than SJP at 1.69%.

So Mr S was advised to transfer the P plan, valued by this time at around £14,750 to the SJP RA, to be invested in line with his medium ATR. Mr S signed to accept the advice in June 2014 and the plan was transferred to SJP. The adviser issued an addendum to the suitability letter in August 2014 clarifying the basis on which the recommendation had been made.

Mr S was concerned about the performance of his RA, so he sought financial advice through his bank, but was put off by their fee. In late 2019 he consulted an independent financial adviser who assessed Mr S as a low to medium risk investor, and as such SJP's Managed Funds portfolio was too high risk for him. So in 2020 Mr S gave instructions to encash his entire plan. Then in 2021 his new adviser recommended he transfer his RA then valued at around £350,570 from SJP to a self-invested personal pension ("SIPP") with another provider, which took place in November 2021. SJP applied an Early Withdrawal Charge of just over £3,033 to the proportion of the fund which had been invested for less than six years.

In March 2023 Mr S complained to SJP that the advice to transfer his pensions hadn't been in his best interests. He said investing exclusively in SJP's funds rather than the more extensive range offered by the other providers "*removed a significant level of risk management and diversity from his portfolio".* And that the higher charges of the SJP plan couldn't be justified.

SJP responded in August 2023 rejecting the complaint, saying the investments in his SJP plan were consistent with Mr S's medium attitude to risk, and were sufficiently diversified. They also performed a comparison with the FTSE UK Private Investors Income Total Return Index, the benchmark used by this service where a consumer was prepared to take some risk with their investments. This showed that until 5 November 2021 when he transferred away, Mr S's SJP RA outperformed the benchmark by almost £6,620. They also refuted the claim that overall the SJP plan was more expensive, pointing out its charges were actually lower than the P plan.

Mr S referred his complaint to this service, saying he hadn't fully understood the implications of transferring his personal pensions to SJP. He hadn't wanted to take excessive risk with his pension and the ceding schemes had given him access to a wider range of investment choices and a lower charging structure than SJP. Our investigator concluded that the risk level of the investments in the ceding schemes and the SJP managed portfolio were broadly consistent, and he thought the implications of transferring had been fully explained to Mr S. So he couldn't say the advice had been unsuitable and rejected the complaint.

Mr S disagreed and felt his complaint may have been misunderstood. He provided his new financial adviser's analysis from December 2019 in relation to the level of risk of his SJP RA. And even if the advice to transfer his plans to SJP wasn't wholly unsuitable, he didn't think investing 73% of his portfolio in equities, of which two thirds were overseas matched a medium ATR.

The investigator didn't think there was a strong enough argument to say Mr S wasn't a medium risk investor, or that the investments weren't consistent with that. So Mr S asked an ombudsman to review the complaint.

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'm not going to uphold it for broadly the same reasons as the investigator. Let me explain why.

I should firstly say that although the advice to transfer the two plans was given in 2011 and 2014 and Mr S didn't complain until more than six years later in 2023, I don't need to consider whether the complaint was referred in time, as SJP has consented to our investigation.

In deciding a complaint I'm required to take account of the relevant law, regulatory rules and guidance, codes of practice and where appropriate, what I consider to be good industry practice. The relevant regulatory rules include the Conduct of Business ("COBS") and Principles for Business ("PRIN") sections of the FCA handbook. Particularly the requirement under PRIN 6 that an adviser must take due account of their customers' needs and treat them fairly, the "*best interests"* rule in COBS 2.1.1R which requires an adviser to act fairly, honestly and professionally in the best interests of the client, and the provision in COBS 9.2.1R regarding suitability when making a personal recommendation.

Of particular relevance to this complaint is the guidance and checklist issued by the regulator in 2009 in relation to pension switching, which arose due to concerns that advisers were making recommendations without properly explaining the advantages and disadvantages of the switch. So when making a recommendation to switch, advisers must ensure they consider factors such as the charges to ensure consumers weren't being switched into more expensive plans without justification, whether the ceding schemes held valuable benefits which would be lost by switching, ensuring the proposed investments matched the consumer's ATR, and whether ongoing management was required, and if so was that put in place.

And my role here is to decide whether the advice was unsuitable, not what would have been the absolute best advice, or to substitute my own judgment for that of the professionally qualified adviser.

I broadly agree with the investigator's analysis of the advice given by SJP to Mr S, so I won't repeat it here. I can see the 2011 suitability report did make clear the SJP was more expensive, but that the 0.3% or 0.4% outperformance necessary to match the benefits of the

S plan seemed realistic, particularly as Mr S intended to increase his employee and employer contributions going forward. The S plan was invested in seven funds including property, corporate and international bonds, high income funds, *Special Situations* funds and an "*Opportunities*" portfolio, which appears quite diversified. But while Opportunities and Special situations funds have the potential for high growth being somewhat speculative, they also tend to be quite high risk. So the overall rating of the S portfolio was probably "medium".

The adviser decided against transferring the P plan in 2010, that was only considered in 2014 as Mr S felt it had been somewhat neglected. The charges for this plan were higher than SJP, and this was due to the additional charge for the guaranteed fund value. And as Mr S didn't intend making further contributions to it, I think the adviser's conclusion that he was unlikely to ever benefit from the maximum charges discount, which would still not be cheaper than SJP was reasonable. The comparison to match the P plan's benefits appeared achievable, and as this plan formed a much smaller part of Mr S's overall retirement provision, on balance the adviser recommended consolidation into the SJP RA. In the addendum to the SR issued in August 2014 the adviser provided a fairer comparison which didn't include the additional 0.5% Mr S had been paying for the GMF. So I can't say the pros and cons of switching weren't explained to Mr S.

It's not clear what "*full implications*" Mr S thinks he wasn't made aware of. But as far as I can see the suitability reports provided a comparison of the advantages and disadvantages in simple language which I think Mr S would've understood. And he had the opportunity to question anything he wasn't clear on. The charges were clearly explained, including the EWC applicable in years one to six. And it was made clear to Mr S that returns were not guaranteed, and past performance is not indicative of future performance. And while the S plan did theoretically allow access to a more extensive choice of funds, in practice he was only invested in seven, and there's no evidence the range of investment options available through SJP wasn't sufficient. Although transferring the P plan wasn't initially recommended, I think there was a clear analysis of the cost and benefit of the GMF, and it was only considered when Mr S's income had improved, increasing his financial security and capacity for loss. When he sought advice from SJP Mr S was around twenty years away from retirement looking to maximise his pension provision, and having his plans in one place enabled closer monitoring and to benefit from regular reviews which wasn't available from provider S or P.

In his initial complaint Mr S told us he hadn't wanted to take "*excessive"* risk with his pension, which is understandable. But I see no suggestion the SJP funds were excessively risky or that the SJP portfolio of funds didn't meet his medium ATR. It appears it's only after the investigator issued his view that Mr S said he considered his ATR to be Low/Medium rather than Medium, which is how he's referred to throughout by SJP.

In 2010 Mr S was given the SJP ATR guide which compares SJPs five classifications of Low, Low/Medium, Medium, Medium/High and High Risk. This says a medium risk investor would typically have investments in a range of assets including a portfolio of shares in UK companies, diversified equity portfolios, managed funds, property funds and with profit bonds, and then it listed the various fund options SJP can offer. In comparison a Low/Medium investigator's portfolio would typically be made up of Gilts (UK government bonds), corporate bonds, foreign government bonds and cautious funds rather than equity funds. It doesn't appear Mr S said at the time he considered his ATR to be lower than Medium, or that he'd rather his portfolio be weighted in lower risk assets such as cautious funds or bonds. Nor did he ask for his ATR to be reassessed in 2013 when he was given SJP's brochure explaining the relationship between risk and reward.

This characterised a Low/Medium risk investor as someone investing for a minimum of five years, cautious but wanting his investments to keep pace with inflation, who would be prepared to invest "*some money in UK and overseas equities and property but not all of it".* A Medium risk investor was willing to invest a greater proportion in higher risk assets with the potential for higher returns, and that they "*understand the risks of investing in overseas markets, including less developed economies*" and would be investing for five to ten years. The SJP managed portfolio includes 23% UK, 34% North American and 16% European equities, but as actively managed funds their composition is likely to have been monitored and adjusted, and at this point Mr S was more than ten years away from his planned retirement date. Mr S has commented that a portfolio comprising 73% equities, two thirds of which were overseas doesn't equate medium risk. While he was invested in US and to a lesser degree European assets, it doesn't appear he had any exposure to less developed economies. And overseas funds wouldn't be impacted by Brexit, a concern he had in relation to UK equities. Plus 79% of his S plan appears to have comprised higher risk or more volatile assets including property, international, special situations and opportunities funds which is broadly comparable, which is why I can't say his exposure to risk increased by transferring.

SJP's guide also included explanations of the different types of assets and provided charts to show their comparative performance over time. This showed that in the 2008 market downturn all assets fell in value, some significantly. Gilts fell by around 5% but recovered the following year to growth of 10%, property fell by more than 20% and recovered much more slowly, and equities fell by around 30% but in 2009 grew by around 30%. So although generally funds invested in equities performed better than gilts, that comes with greater volatility which is why investments should be viewed over the longer term. If Mr S considered himself more of a cautious investor having read this brochure, I think he could have mentioned this at the 2013 or 2014 reviews where he was reconfirmed as a Medium-risk investor.

While the risk questionnaire used by the new advisor in 2019 categorised Mr S as Low/Medium, the adviser admitted this was "*only just"* as his score of 44 was only one point away from being Medium, and the adviser explained firms use different ATR methodologies. So I can't say the "Medium" assessment was incorrect, or that the composition of Mr S's portfolio didn't match SJP's definition of "Medium-risk" as set out in its literature.

Mr S told our investigator he'd been regularly monitoring the performance of his RA via the SJP portal through 2018 and 2019 becoming increasingly concerned about losses. And then he was told by his new financial adviser his SJP portfolio was too risky. But instead of discussing with SJP the possibility of reducing his exposure to UK equities due to concerns about the impact of Brexit, or de-risking his portfolio more generally, in 2020 Mr S took the decision to encash it in full, thus crystallising his loss when markets were at their lowest. So he out of the market when they began to recover, even though at that point he still had a potential investment horizon of almost ten years, which I can't hold SJP responsible for.

So while I understand Mr S may have been disappointed by the performance of his plans and was becoming increasingly worried about volatility caused by external factors, I can't say SJP's advice to switch was unsuitable, or that they were responsible for his loss.

My final decision

I don't uphold this complaint or require St James's Place Wealth Management Plc to do anything more.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr S to accept or reject my decision before 28 April 2025.

Sarah Milne
Ombudsman