

## **The complaint**

Mr B complains about advice given by a partner at St James's Place Wealth Management Plc ("SJP") to switch his personal pension to them, which he says was negligent and led to a financial loss.

Mr B has also been charged ongoing advice fees but says he's received no annual reviews. So to put things right he requires a full refund of all charges since inception.

Mr B is represented in this complaint by a claims management company, but for ease of reading I'll mainly refer to Mr B.

## **What happened**

Mr B had a five-year fixed term annuity with provider "J" valued at around £134,673, which was due to end on 1 May 2019.

In March 2019 prior to the maturity date, Mr B (and his wife) consulted Mr D, their neighbour who they knew socially, a chartered financial planner at a firm which is an appointed representative of SJP. The adviser carried out a financial review of Mr and Mrs B's circumstances and objectives.

The fact-find and suitability report captured the following information:

- Mr B was aged 65, married, with no dependent children. Mrs B had been an SJP client since 2008.
- He was self-employed working as a medical equipment engineer earning around £47k but planned to limit his client base which would reduce his employment income to around £20k a year.
- Mr B's small workplace pension had been in payment since age 55, and he already had a retirement account with SJP since 2018 valued at around £25,946.
- Their main residence valued at around £490k was jointly owned mortgage-free, and they received income from a rental property valued at around £100k.
- As well as around £20k in cash savings, Mr B had a stocks and shares ISA with provider "N" and one with SJP valued at around £16,232.
- Mr B's fixed-term annuity (capped drawdown plan) with provider J started in April 2014, from fully crystallised funds, having released the full 25% tax free lump sum.
- On maturity an annuity was the only option offered by J. The alternatives were to transfer away to a drawdown plan or take the value as a one-off taxable payment.
- Mr B didn't need to access this pension for around five years, as he'd be eligible for the State pension from November 2019.
- Mr B was assessed as a medium risk investor.

As provider J couldn't offer a new fixed term annuity or a drawdown plan, the adviser recommended that at maturity Mr B switch the balance from J to his retirement account with SJP. This would mean he could benefit from regular reviews (annually at a minimum), access to advice and the flexibility its plan would provide. The suitability report issued in April

2019 set out that SJP's charges may be higher than his current provider, and due to the charging structure an Early Withdrawal Charge would apply if he left SJP within six years.

Mr B accepted the advice and in May 2019 the maturity value of the J plan was transferred to SJP, invested in its "*Balanced*" portfolio, as Mr B was a medium risk investor. Since then Mr B made two further contributions to his SJP plan, £16,000 in December 2020 and £5,000 in March 2022 (net figures).

In June 2023 Mr B (via his representatives) complained to SJP, making a number of points, the key ones being:

- his plan had not performed as well as the adviser promised
- he didn't know SJP partners are tied advisers, and should have been told to seek independent financial advice
- the SJP agent should've said his previous plan (with J) adequately met his needs and he didn't need to switch
- the charges on his previous plan were lower, and SJP's higher charges weren't disclosed
- there's no evidence a fact-finding process was carried out
- despite paying on-going advice fees Mr B never had a review of his investments
- SJP should carry out a loss assessment based on Mr B's pension remaining with his previous provider

In August 2023 SJP explained its response to Mr B's complaint was delayed, so in November 2023 he referred his complaint to this service.

SJP finally issued its formal response in February 2024. Firstly it corrected the basis of its investigation, as the transfer to SJP was from provider J in 2019, not from provider P in 2000 as the complaint had stated.

SJP explained that Mr B had requested advice as his fixed-term annuity was due to mature. The only option available from J was another annuity, and Mr B didn't need to take benefits yet. Capped drawdown which Mr B wanted meant transferring away, as that option was no longer available from J. A full assessment of Mr B's circumstances had been carried out, and he'd been provided with documentation including SJP's terms of business, and its fees and charges. Mr B was fully aware of the limited range of funds SJP could offer, and he was given cancellation rights if he decided not to proceed. SJP found no concerns with the advice its partner Mr D had provided, and regular reviews had taken place each year, apart from in 2023, when a review was offered but declined by Mr B.

So on that basis SJP offered to refund the ongoing advice fees for 2023, plus 8% interest, (less 20% tax), plus £150 for the distress and inconvenience this caused, and a further £100 for the delay in responding to his complaint, total redress of £1,358.71.

In March 2024 Mr B rejected SJP's offer and asked this service to review his complaint. He explained that in 2022 he'd told SJP he didn't want annual reviews, and yet they continued to charge him. He felt his ISA would've performed better had it stayed with provider C. And he intended to transfer away from SJP at the end of 2025 when the early withdrawal fees ceased to apply.

To determine whether annual reviews had taken place since the initial discussion in 2019, our investigator asked SJP for evidence of the reviews from 2020 onwards. Mr B subsequently clarified he saw Mr D regularly as they were neighbours and played golf together, but while his finances were sometimes discussed, he didn't consider these to be formal meetings, and nothing was written down.

SJP provided copies the investigator with of a number of letters following review meetings with Mr B, as follows:

- April 2020 - which assessed that Mr B didn't need to access his SJP pension yet as his income derived from his self-employment, plus a private and State pension was sufficient to meet his needs. The pandemic had significantly reduced Mr B's income as he was unable to travel to clients, however his expenditure had also reduced. It confirmed his attitude to risk hadn't changed, and that capped drawdown remained suitable.
- November 2020 - in which the adviser recommended Mr B make a net contribution to his plan of £16,000.
- April 2021 - Mr B still didn't need to access his SJP plan as his income derived from his self-employment, plus a private and State pension remained sufficient to meet his needs. It recommended Mr B continue with capped drawdown, although it set out that an annuity was an option. It noted Mr B's health condition and that his attitude to risk hadn't changed.
- March 2022 – which arose following Mr B contacting the adviser as he wished to make a pension gross contribution of £6,250 (£5,000 net). This letter also noted Mr B had been provided with copies of three documents, the service costs and disclosure document which explained the charges, an illustration of Mr B's investments and an explanation of the link between risk and reward. His intended retirement age was updated to 70.
- July 2022 - which confirmed Mr B continued to live comfortably on his current income. The adviser recommended a review of the investment fund choices, but Mr B hadn't wished to make any changes at that time.

The investigator thought that with regard to the ongoing advice charges SJP had given Mr B the information it was obliged to about its charges, and he considered it had provided him with annual reviews and service from 2019 to 2022, so it was entitled to charge for that period. But as no review was carried out in 2023 its offer to refund those charges was fair.

He didn't think SJP's advice in relation to Mr B's pension and ISA had been unsuitable, as they'd been invested in line with his balanced attitude to risk. Provider J's product range offered no flexibility around when and how benefits could be taken, as it could only offer an annuity rather than the capped drawdown Mr B wanted. The risks and product features had been set out in the suitability letters, and Mr B had been made aware of the fees and charges.

And while markets had been volatile due to external factors over that period, fund performance should be viewed over a longer term. The SJP plan had some exposure to global equities, but he considered this appropriate to meet Mr B's growth requirement, it had seen positive returns over five years, and performed broadly in line with the appropriate benchmark indices.

He explained that the redress offered by SJP put Mr B back in the position he should've been in, having not received a service in 2023, plus additional compensation to reflect the inconvenience he experienced. So he thought it was fair and didn't ask SJP to do more.

Mr B didn't accept the investigator's view, saying that he had specifically told SJP he didn't require annual reviews yet had been charged for them. And he reiterated that as the adviser

was a friend he didn't consider the conversations between them to have been formal reviews.

These points didn't change the investigator's mind, so the case has come to me to 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.

The adviser Mr D told us he and Mr B have been neighbours for over 20 years, they play golf and have been on holiday together. Mr D has also been Mr B's wife's adviser since 2008. But even when the client is a friend, an adviser is still bound by regulatory responsibilities when providing a recommendation. These rules and guidance are set out in the Financial Conduct Authority handbook under the Conduct of Business Sourcebook (COBS) and the Principles for Business (PRIN). Of particular relevance to this complaint are:

COBS 2.1.1 - A business must act honestly, fairly and professionally in accordance with the best interests of its client.

COBS 9 – “*Suitability*”

PRIN 2.1(6) - a firm pay due regard to the interests of its customer and treat them fairly;

PRIN 2.1(7) – a firm must ..... communicate information to them in a way which is clear, fair and not misleading

PRIN 2.1(9) – a firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgement

Mr B's complaint is in part about an unsuitable recommendation to switch his pension from provider J to SJP, and there's been several regulatory updates relevant to switching.

In 2009 the then regulator the Financial Services Authority (“FSA”) published a report concerning the quality of advice on pension switching which set out four key areas it felt consumers had lost out. These were in summary:

- They'd been switched to a plan that is more expensive than their existing or a stakeholder plan (because of exit penalties or initial or ongoing costs) without good reason.
- They had lost guaranteed benefits without good reason
- They'd moved to a plan which didn't meet their attitude to risk (“ATR”) or personal circumstances
- They had moved into a plan which required ongoing investment reviews, but these were not explained, offered, or put in place.

Mr B's plan had no guaranteed benefits which would be lost on switching, but the adviser would need to be mindful of the other three points when advising Mr B.

In 2012 the FSA issued guidance (FG12-16) *Assessing suitability: Replacement business and centralised investment propositions*. Among other things this noted that advisers were failing to take account of the impact of charges or provide comparisons in a format which the consumer could understand. Switches were being recommended on the basis of improved performance, with no supporting evidence.

Finally in 2016 the FCA issued further guidance around assessing suitability which (in summary) required the adviser to objectively assess a client's needs and objectives, gather necessary information about the client's finances, and to implement effective risk management procedures to guard against unsuitable advice and poor client outcomes.

### *Switch suitability*

Mr B believes the adviser should've explained he didn't need to transfer from J as his existing plan was suitable for his needs and wanted to know what his plan would be worth had he not switched to SJP. But the evidence shows J doesn't offer the products Mr B wanted. The plan with J was a fixed term annuity which provided income for a five-year period from 2014 to 2019. J no longer provides these, so when Mr B's plan matured in May 2019 J could only offer two options, to cash in the plan completely or use the whole fund to purchase an annuity, neither of which Mr B wanted. Mr B had planned to reduce his self-employed income by scaling back the clients he visited, (which he was forced to do anyway by the pandemic). But as he'd soon reach State pension age, he didn't need to take income from this pension, which is why cashing it in or purchasing an annuity at that point didn't appeal. J doesn't offer capped or flexible drawdown, so Mr B needed to transfer elsewhere which is why he sought advice from Mr D about switching the matured J plan to his existing SJP Retirement Account.

I can't say this was an unsuitable recommendation. Mr B knew and trusted the adviser, and as his wife had been a client since 2008, and he'd had a retirement account for some years I think he was aware Mr D's firm was part of SJP. He'd be familiar with SJP's service offer, so I can't agree SJP was obliged to recommend he seek independent financial advice. Mr B could have consulted an independent adviser if he wished, but this is likely to have involved their advice fee being deducted from the transfer value, which wasn't the case with SJP.

I'm satisfied a fact-finding exercise took place in early 2019, when the adviser captured relevant information about Mr B's finances (and those he shared with his wife), plus his needs, objectives, and attitude to risk. The details were recorded in the "*Investment and Client Details*" report, and the "*client meeting summary*" section records a previous meeting with Mr and Mrs B in September 2019 which included a "*retirement review*" discussion with Mr B. I think the recorded information was sufficiently detailed to suggest Mr B was engaged in the process, rather than it being a record of information Mr D may have gleaned through their relationship as neighbours.

Mr B's attitude to risk was also assessed as "*medium/balanced*" which he hasn't challenged, and I've not seen anything to suggest this was inaccurate.

In his complaint letter Mr B said that he'd be better off if his cash ISA had remained with provider "C" as it would be earning interest of 5.35%. There's nothing in the suitability letters to show SJP specifically advised Mr B on transferring a cash ISA. Although the 2019 fact find has a note in relation to a discussion about the investment strategy for Mrs B's stocks and shares ISA that "*[Mr B] wishes to transfer his Cash ISA into similar funds to [Mrs B]*". This document notes that Client 1 (Mrs B) held a cash ISA with provider C, Mr B is recorded as having a stocks and shares ISA held with provider N, which the adviser noted as "*biased towards the Adventurous end of the risk spectrum*".

I think the comment about the beneficial interest rate was probably made with hindsight, as at the relevant time savings rates were generally low, Bank of England base rate was less than 1%, and provider C's cash ISA rate appears to have been only 2.3%.

In the 2019 suitability report Mr D said "*As part of my ongoing service I will conduct annual reviews, and you are also aware that I can be conducted at any time in between our scheduled reviews to deal with any matters you may wish to discuss*". From the available

evidence I'm satisfied annual reviews did take place, and that these were conducted on a professional basis. It's not always necessary to make changes to investments following an annual review if the consumer's objectives, circumstances, and attitude to risk haven't changed. I can see from the review letters that each year these factors were revisited and updated, as I'd expect them to be. For example the negative impact of the pandemic on Mr B's income was noted in the 2020 report, as he was unable to visit customers, whose businesses in any case weren't able to trade. Mr B's health was recorded as being "*good*" (apart from a job-related bad back in 2019) until the 2021 review when an ongoing health condition was recorded. And in 2022 when Mr B was 67, it was noted that in the future he may wish to move from capped drawdown to purchasing an annuity.

SJP's records show that Mr B did request no annual reviews in 2021, but when Mr D contacted him direct, Mr B engaged in the two meetings in 2022 detailed above. I think if Mr B didn't want further assistance from the adviser he would've declined those meetings. So overall I can't uphold Mr B's claims that he could've stayed with J, or that once he switched to SJP he never received annual reviews.

### *charges*

The impact of charges on fund performance is a key factor when considering the suitability of a switch, but I don't think charges were the deciding factor here. I've explained that remaining with J wasn't an option unless Mr B wanted to purchase an annuity, so Mr D was consulted due to the trust and long-standing relationship, and because Mr B already had a SJP retirement account. As a businessman himself I think Mr B wouldn't seriously expect professional financial advice to be provided free of charge, and I'm satisfied he was made aware of the applicable charges before he agreed to transfer his maturing plan from J to SJP. The suitability letter dated 10 April 2019 which followed the meeting on 6 March 2019 confirmed Mr B had been provided with a copy of SJP's Services Costs and Disclosure Document ("SCDD") which includes its terms of business, as well as illustrations and documents explaining the relationship between risk and reward. The financial review document records that 28 January 2019 was the date the SCDD was given to "*the client*". It's not clear whether this specifically refers to Mr B or his wife, but as most of the meetings with the adviser involved them both, I think on balance Mr B would've seen this document. And if he hadn't I think he had the opportunity to request a copy at the time.

The 2019 suitability report points out that SJP's charges may be higher than his current provider, and that due to SJP's charging structure an early withdrawal fee will apply for the first six years. It explained that SJP charged an initial advice fee of £6,060 (4.5% of the transfer value) to arrange the transfer of Mr B's plan from J to SJP. And that the monetary value of the ongoing advice fee of 0.5% will fluctuate in line with the plan valuation, and it gave an example of how that works in practice.

Mr B was also provided with a key facts document, and an illustration of how his SJP plan would work. This set out the applicable charges, which were the initial advice fee of 4.5% and a product charge of 1.5%. The ongoing charges would be 0.5% of the fund value for ongoing advice and 1% for the product (so 1.5% per year). The illustration also set out the varying fees for different types of investments and assets, explaining he could have up to twenty free fund switches a year.

Unlike many firms, SJP doesn't deduct its initial advice fee from the transfer sum, it's taken over the first six years of the investment, reducing from 6% to zero, which is why the early withdrawal fee applies, and the illustration describes the fee as "*effectively waived for first six years*" (unless the individual moved away from SJP). I think Mr B understood this, as he's explained he'll wait until the early withdrawal fee no longer applies to move away from SJP.

SJP's annual management fee of 1.5% ("AMC"), for administering the plan in line with regulatory requirements, includes ongoing advice. And an external management charge ("EMT") which includes charges paid to the external fund managers who manage the plan's investments. Over the period from 2018 to 2023 the total of these charges ranged from 1.91% to 2.04%

The adviser then considered Mr B's options and provided a suitability report with recommendations dated 10 April 2019 for Mr B's consideration. Mr B signed the Client declaration on 21 April 2019 confirming the suitability report had been explained to him and he had sufficient information to make an informed choice, he understood the illustrations provided were not guarantees of future performance and if he went ahead the actual transfer value and future income and tax-free cash may be different from set out in the report. I think these documents are evidence at least some of their discussions were conducted on a professional basis, and don't support Mr B's position that every meeting was simply an informal chat with nothing written down.

The letters the adviser sent Mr B following the first and third annual reviews in December 2020 and March 2022, set out that he'd been given a copy of the SCDD, which set out SJP's charges. And each letter refers to an annual review document which had been provided to Mr B direct from SJP which would've included a statement of fund performance showing the deduction of charges over the past year, so I think Mr B was made aware of the charges which applied.

This complaint is only about the service provided to Mr B, but his wife was an SJP client herself, and I understand she was often present at Mr B's meetings with the adviser. I've seen evidence to show when she contacted the adviser on her own behalf she would sometimes also mention Mr B. For example in February 2022 when Mrs B contacted the adviser (by text) about making a pension contribution, she queried whether Mr B should do the same to minimise his tax liability. Even what a query is made through an informal channel the adviser is still being consulted on a professional basis.

Mr B has mentioned discussing his finances with Mr D while they played golf but didn't consider these discussions to be formal or chargeable. As part of their complaint investigation SJP asked Mr D for his comments, and he admitted it was sometimes difficult to get Mr B (and his wife) to commit to formal review meetings, yet he was regularly consulted for information and advice which he felt the clients were reluctant to pay for. But as explained previously, even if discussions are conducted in an informal way rather than in a face-to-face formal setting, the adviser is still being consulted in a professional capacity. They are bound by regulatory obligations and potentially liable for the consequences of unsuitable advice, so are entitled to consider their services to be chargeable. Even when the relationship is on friendly terms, I do not consider it fair or reasonable to consult an adviser for their professional expertise while not expecting to pay their fees.

I'm satisfied that alongside any informal discussions, Mr B received annual reviews which were professionally carried out and documented, apart from in 2023 when a review was offered but declined. And SJP has offered a refund of its fees for this period which I think is appropriate and fair.

### *Fund performance*

Mr B has expressed dissatisfaction about the performance of his plan since it's been with SJP. I've explained that the initial advice fee of £6,060 wasn't deducted from the plan value on transfer, so a larger sum was invested from the outset than it would've been if he transferred elsewhere. Mr B hasn't specifically challenged the assessment of his attitude to risk as balanced/medium risk, so I've no reason to think it was inaccurate. Financial markets

generally have been volatile in recent years, due to external factors such as the pandemic, the war in Ukraine and the rising cost of living. And lower risk assets, such as bonds were impacted by the mini budget in 2022, which did lead to portfolio values falling around that time, although they may have recovered since.

But a fall in value doesn't necessarily mean the advice was unsuitable or that the funds were invested incorrectly. Mr B is invested in SJP's "*balanced*" portfolio which appears to match his "*medium*" attitude to risk and fund performance particularly for pensions should generally be viewed over a longer time period. Mr B hasn't crystallised any loss, and as he's now entitled to receive the State pension, his income combined with his wife's was sufficient to meet their needs, he has no debts and receives additional income from a rental property, so he had no immediate need to access this plan.

As I'm satisfied SJP provided a service to Mr B I see no basis to expect it to refund all its fees since inception. SJP has offered to refund the ongoing advice fees for Mr B's pension and ISA accounts for 2023 when no review took place, adding 8% simple interest (less basic rate tax), which puts Mr B in the position he should be in. SJP also added £150 to reflect the inconvenience to Mr B and £100 for the delay in responding to his concerns, making a total offer of £1,358.71, which I think is fair in all the circumstances.

### **Putting things right**

SJP should pay Mr B £1,358.71 within 28 days of being notified of his acceptance of the decision, after which interest should be added to this award at 8% simple per year until payment is made.

If SJP considers that it's required by HM Revenue & Customs ("HMRC") to deduct income tax from that interest, it should tell Mr B how much it's taken off. It should also provide a tax deduction certificate if he asks for one, so he can reclaim the tax from HMRC if appropriate.

### **My final decision**

I uphold this complaint. St James's Place Wealth Plc should pay Mr B the redress in line with its offer as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 22 January 2025.

Sarah Milne  
**Ombudsman**