DRN-5227776

The complaint

Mr U says a St. James's Place Wealth Management Plc ('SJP') partner ('the partner') gave him unsuitable advice to transfer part of his employment-based Royal London ('RL') Group Personal Pension ('GPP') into an SJP Retirement Account ('RA') – 'the pension switch'. He says the recommendation was made despite the availability of a cheaper and more tax efficient salary sacrifice alternative in the GPP that he could have used, and despite the facility to conduct fund switches within the GPP. He also says the partner's advice was conflicted because it was tied to the SJP RA, so he was motivated by the commission he would earn for successfully recommending it.

Mr U wants a refund of all the fees he paid the partner, a waiver of the RA's exit penalties (in order for him to return his funds to the RL GPP), and redress for any financial loss resulting from the pension switch.

SJP disputes the complaint.

What happened

I issued a Provisional Decision ('PD') for this complaint on 7 December 2024. Both parties were invited to comment on it.

SJP cited a matter which, it says, has been misunderstood within the PD, but it also conceded grounds on which it accepts the PD. Mr U accepts the PD, but he has also referred to, and clarified, the same matter that SJP addressed. I will summarise the parties' comments further below. First, for background on the present decision, I quote from the PD.

With regards to the facts and events in the case, the PD mainly said –

"*The partner's recommendations to Mr U happened over three stages in May 2023. Before that, the fact-find document produced for him at the time refers to a fact-finding meeting in March 2023. It shows that he was in his early 40s and employed fulltime, he was single and without dependents, he had a mortgage liability of £440,000 and debt liability of £18,350, he had net monthly disposable income of £3,521 after monthly expenses of a similar amount, he had an emergency cash fund of £50,000, the RL GPP (valued at around £79,000) was his only pension arrangement, and he had a long-term investment timeframe of "15+ years".*

In his complaint submissions, Mr U says he was approached by the partner in March, that he previously did not know about SJP's existence or services, and that the partner was the first professional in the field of pensions that he ever spoke to, so his engagement with the partner and the recommendations he received happened in this context.

The 4 May Suitability Report ('SR') and Illustration

This SR refers to a discussion with Mr U in April. It confirms that he had a medium risk profile and that his objectives were to focus on retirement planning (with a preferred/planned retirement age of 60), to invest for his retirement, to have in place an Ongoing Advice

Service ('OAS') with regular reviews and to access SJP's approach to investment management. The OAS was confirmed, in the report's covering letter, as being a part of the partner's recommended solution (in which he (the partner) undertook to conduct reviews every six months).

This SR recommended no change to the RL GPP (now valued at around £76,000 and into which only employer contributions of around £1,000 per month were being made). Instead, it recommended that Mr U open an SJP RA and make regular monthly contributions of £1,000 (net) into it.

The report compared the two pensions and informed Mr U that the annual cost of the RA (1.7%) was 1.30% per year higher than the GPP's annual cost (0.4%). It explained that because of the higher cost, this difference was the annual outperformance required in the RA (without any guarantee) to match the fund value he could have had if he contributed to and invested through the GPP. The illustration for the SR confirmed that the Initial Advice Charge ('IAC') for the recommendation was 4.50% and that the Ongoing Advice Charge ('OAC') for the OAS would be 0.50%. With regards to the RA product, there was an initial charge of 1.50%, an ongoing charge of 1% per year which was effectively waived for the first six years, and an Early Withdrawal Charge ('EWC') of 1% for the first six years. The illustration also explained that all charges (advice and product) adversely affected growth in the RA by 1.8% per year.

This SR set out the recommended equities portfolio for the RA as follows – Global Equity fund (medium risk) 35%; International Equity fund (medium risk) 30%; Managed Growth fund (medium risk) 15%; Strategic Managed fund (medium risk) 10%; and North American fund (upper medium risk) 10%.

The 12 May SR

This 2-page letter was sent, by the partner, to Mr U as a follow-up to the 4 May SR. It refers to the partner's discussion with him on 3 May, where the RA recommendation appears to have been discussed. Based on the same assessment as set out in the 4 May SR, it recommended a single deposit of £1,250 into the RA, which was a revision of the previous recommendation of monthly contributions.

The 24 May SR and Illustration

This SR is more detailed than that of 12 May. It refers to the same discussion of 3 May, and it is also broadly based on the same assessment as set out in the 4 May SR.

In this (24 May) SR, the partner recommended transfer of £20,000 out of the RL GPP's value into the SJP RA. In his submissions, Mr U explains that the partner had wanted him to transfer the entire value in the GPP, but he refused to do so and limited the transfer to only £20,000.

Broadly the same overall profile for Mr U (with the addition of the RA that had been put in place, as his second pension arrangement) is set out. In addition to the partial pension switch, the same RA equities portfolio and OAS are recommended for mainly the same reasons as those given in the first SR.

This SR summarises the main characteristics of the GPP, showing that it began in 2016; it was invested in an Adventurous Managed Portfolio ('AMP') with a 'life-styling' effect that meant it began with a high risk/adventurous profile and would gradually move into a lower risk profile in the lead up to retirement; its selected retirement age was 65; and it had no exit penalties and no benefits (other than a £477.45 profit share facility).

The SR justifies the partial switch recommendation justified on the grounds that it resolves Mr U's concerns about the GPP lacking an OAS. There seems to be a suggestion of other concerns but no others are specified. The partner said he did not recommend redirection of the GPP contributions to the RA because he noted that Mr U wanted to make contributions into the GPP. Instead, the partner's advice was limited to the £20,000 transfer value only.

The same 1.30% per year difference in charges, between the GPP and the RA, is explained in the report. However, due to a discount applied to the IAC this difference was reduced to 1.24% per year and this is stated as the rate of outperformance required in the RA (without any guarantee) to match the fund value Mr U could have had if he left the £20,000 in the GPP. The SR also notes that other disadvantages of the switch, in addition to the higher charges, were the EWC in the RA, fewer available funds in the RA, and the loss of the GPP's life-styling facility.

The illustration connected to this SR confirmed that the IAC for the recommendation was 4.05% and that the OAC was 0.50% per year. With regards to the RA product, there was an initial charge of 1.17%, an ongoing charge of 0.94% per year which was effectively waived for the first five years and six months, and then an EWC of no more than 1.27% for the first six years. The illustration also explained that all charges (advice and product) adversely affected growth in the RA by 1.7% per year.

The Complaint

Mr U's claims are mainly as summarised at the outset above. He has also informed us that the salary sacrifice alternative has been confirmed to him in his employment and that his ability to switch funds within the GPP has been exercised (he did so in September 2023). Furthermore, he says he has been self-contributing into the GPP since October 2023.

SJP's complaint response appears to have been delayed, so Mr U referred the complaint to us before it was issued. Its response was not issued until after one of our investigators had provided his view on the complaint.

SJP's complaint response essentially repeats, and elaborates upon, the grounds on which the partner considered his recommendations to be suitability. It has emphasised the values of its OAS and its approach to investment management, as did the partner, and it claims that achieving both were important objectives for Mr U at the time of advice – noting that its OAC was/is below the market average of 0.8% per year. It also highlights that between May 2023 and May 2024 Mr U's RA portfolio outperformed its benchmark index and achieved growth of 17.6%.

With regards to delivering the OAS that Mr U paid for, SJP says the partner provided him with fund switching advice in September 2023 and tax relief related advice following the end of the 2023/2024 tax year, and that in the latter case the partner updated him on performance of the RA portfolio and invited him to book his annual review.

There is wider evidence, directly from the partner, referring to Mr U's disengagement from September 2023 onwards; his cancellation of contributions in this month; the absence of a response from him to two emails from the partner asking for the reasons behind the cancellation; the absence of responses from him to two subsequent emails about a mortgage application and fund switches; and the absence of a response from him to communication(s) around April/May this year about the tax relief matter, the portfolio's performance and the annual review invitation. In conclusion, the partner doubted that Mr U had any interest in continuing their relationship."

The main findings in the PD were as follows –

"*The May 2023 Advice*

The regulator's Principles for Businesses, at Principle 6, required the partner to pay due regard to Mr U's interests and treat him fairly.

It could be said that this responsibility was essentially restated in the regulator's Conduct of Business ('COBS') rules at COBS 2.1.1R, which requires a firm to act honestly, fairly and professionally in accordance with the best interests of its clients and in relation to designated investment business carried on for a retail client. Mr U was such a client of the partner's, so he was owed an advisory service from the partner in which the advice was in his best interests.

It is also noteworthy that the regulator's 2016 guidance on 'assessing suitability' in replacement business, as I address further below, also confirmed an expectation upon firms to objectively consider their clients' needs and objectives (or goals).

Therefore, overall, the partner should have provided suitable advice to Mr U, in his best interests, and he should have done so with an objective approach towards Mr U's needs and goals.

In 2009, the regulator produced a checklist for pension switching which highlighted four key issues that advising firms were expected to consider. In the process of his advice to Mr U the partner would have – or ought reasonably to have – been mindful of this. One of the four considerations was 'charges', and the question firms were/are expected to address was/is – is the consumer being switched to a pension that is more expensive than the existing one(s) or a stakeholder pension without good reason?

Relevant regulatory guidance in 2012 included the following –

"Replacement business

2.11 We continue to identify firms failing to consider the impact and suitability of additional charges when conducting replacement business. Several firms in our review failed to consider the costs and features of the existing investment, and were unable to quantify the additional charges associated with the new investment. In addition, several firms failed to provide a comparison of the costs of the existing investment and the new recommendation in a way the client was likely to understand.

2.12 We saw examples of firms recommending switches based on improved performance prospects, but providing no supporting evidence to show that these performance prospects were likely to be achieved. While we acknowledge that firms cannot be precise about the potential for higher returns, where improved performance is an objective of the client, firms should clearly demonstrate why they expect improved performance to be more likely in the new investment.

2.13 Firms often failed to collect adequate information on the existing investment or failed to consider the features and funds available within the existing solution. Firms should collect adequate information on the existing investment to demonstrate they have taken reasonable steps to ensure the suitability of their recommendation."

Overall and on balance, I am satisfied that the partner was sufficiently clear, in the 4 May and 24 May SRs, about the additional costs of his recommendations, about the impact of those additional costs in terms of the outperformances required to answer the impact, and

about the comparisons to which the outperformance forecasts related. As such, I do not consider that he did anything wrong with regards to the concerns the regulator addressed in paragraph 2.11 above.

However, the impact of the additional costs had to be meaningfully addressed. The partner had to ensure it was suitable for Mr U, and in his best interests, to undertake such additional costs in the circumstances of his case, and he also had to ensure there was a reasonably definitive plan to address how the recommendations would, at least, compensate for the additional costs. If there was no foreseeable and likely way in which the recommendation would compensate for the additional costs, that called into question why such costs should be undertaken, and it means there was a lack of 'good reason' to do so.

Mr U was more than 15 years away from his preferred retirement age, and the fact-find's reference to his 15+ years investment term reflected this. As I said above, at the time of the fact-finding and the time of advice – "… he was single and without dependents, he had a mortgage liability of £440,000 and debt liability of £18,350, he had net monthly disposable income of £3,521 after monthly expenses of a similar amount, he had an emergency cash fund of £50,000, the RL GPP (valued at around £79,000) was his only pension arrangement …".

He has stressed that his engagement with the partner was initiated by the partner, and that he previously had no cause to look into or revise his pension arrangements, and had never previously met any professional for that purpose. I have not seen evidence to dispute this account.

Indeed, I find there is discernible evidence of an overall sense of reluctance in Mr U's position throughout his engagements with the partner, beginning from the advice in May and thereafter. This evidence, as I summarise next, lends itself to the conclusion that it was probably the partner – not Mr U – who was the driver behind the review of his pension arrangements, the objectives set out for the review and the RA and pension switch that followed.

As summarised in the background section above, the first SR recommended regular monthly contributions into the RA. It seems that Mr U subsequently rejected that, because the second RA then revised the proposal and referred to a single contribution. The second SR made no mention of any switch from the RL GPP, but the third SR did. The recommendation was a partial switch, limited to only £20,000 from the total value of around £76,000 in the GPP.

There appears to be no explanation as to why or how the partner reached this precise recommendation. Mr U's account that he had rejected the idea of a full value switch and compromised on the idea of this part value switch seems plausible in the circumstances. If, as it appears, the partner sold the RA (inclusive of the OAS) as a better product than the GPP it is more likely (than not) that he would have recommended a full value switch, unless that was opposed or rejected by Mr U (as he has described).

Furthermore, and with regards to the post-switch RA, his decision not to make regular contributions into the RA and to do so into the GPP instead, as captured in the third SR, also indicates that he remained unpersuaded by the partner's initial advice to contribute into the RA.

Thereafter, and within four months of the advice, Mr U appears to have disengaged completely from his relationship with the partner. The partner's evidence and description in this respect – as summarised in the background section above – confirms this.

On balance, all the above establishes, or at least strongly suggests, that Mr U was reluctant to follow the partner's advice, that he declined the recommendation of regular contributions into the RA, that he probably declined the partner's attempt to have the GPP's entire value switched to the RA and that he declined the partner's OAS altogether around four months into it.

These elements do not support the notion that Mr U had concerns about the GPP, that he wanted to switch to the RA, and that he wanted to do so for the benefit of SJP's OAS and its investment approach. As the investigator said, there is a lack of evidence that 'concerns' with the GPP were discussed, and as is confirmed in the third SR Mr U's preference (and decision) was to contribute into the GPP as opposed to contributing into the RA.

Overall, on balance and for the above reasons, I am not persuaded that Mr U approached the matter seeking SJP's OAS and/or its investment management approach, it is more likely (than not) that the partner sold both to him as potential benefits and I do not consider that he was ever fully persuaded by the partner's sales pitch in this respect.

In these circumstances I do not accept that the prospect of accessing SJP's investment management approach and its OAS, on their own, were enough to make the recommendations suitable, and I do not find that they justified the additional costs to Mr U.

The additional costs were quite stark, and the partner's advice does not appear to have presented him with a sufficiently defined strategy, over the likely 15+ years term, on how the required outperformance was likely or more likely to be achieved. The illustrations that were conducted, as I mentioned above, did not include or amount to such a strategy.

The SJP RP recommendation(s) came with an increase in annual fees of between 1.24% and 1.30%. This stood in the context of the GPP's annual fees being 0.40%, so the increase was around triple the amount Mr U was paying in the GPP. Therefore, the need for a cost/benefits analysis was somewhat inescapable. In this regard, the illustrations showed that the total of advice and product costs were bound to adversely affect growth in the RA by between 1.7% and 1.8% per year. In other words, it appears that the RA had to achieve an outperformance of the GPP by between 1.24% and 1.30% per year alongside the need to overcome the 1.7% to 1.8% per year fees related adverse impact on growth. Yet, I repeat, no meaningful plan was set out by the partner on how this could be achieved.

Equally, or perhaps more, important is the question of why Mr U should have put himself in the position of facing such a significant outperformance task (outperformance of the GPP and the effect of fees) in the RA. There is no evidence that he needed, or initiated an objective for, the RA, and as I have established above he appears to have been content with the GPP. As I said, I consider it more likely (than not) that the OAS and SJP investment approach were potential benefits sold to him, as opposed to things he pursued or initiated the consideration of.

On balance, I do not accept that the objectives stated by the partner were really objectives held by Mr U – or, to put it in another way, I have not seen evidence to persuade me that he was looking for a way in which £20,000 out of the value of his GPP could be exposed to active investment management and an OAS. Given this relatively low value, I also consider that the impact of the costs of such services was arguably bound to be an important factor to address. In Mr U's case that impact was an increase in annual costs around three times the annual cost of the GPP. In addition, and as the partner acknowledged, there were fewer funds available in the RA (the GPP had over 200 available funds, but that RA had 36), and there was an EWC of between 1% to 1.27% to face in the first six years of the RA.

I make a similar provisional finding with regards to the notion of Mr U making contributions

into his or a pension. The investigator commented that it is not a bad idea to save for retirement, and I agree, but it remains important to determine whether (or not) Mr U held an objective to make such contributions. On balance, I do not consider that he did. Instead, it appears that this was another idea sold to him by the partner. I do not say or suggest that, depending on the circumstances, an adviser cannot initiate goals for a client to consider (in the client's best interests), but it is important to be clear about what, on balance, Mr U did or did not present as his objective(s).

He already had employer contributions going into the GPP and he seems to have been contented with that. It is noteworthy that he must have declined the 4 May SR's recommendation of making regular contributions into the RA, because that recommendation was reversed/deleted in the follow-up 12 May SR. By the time of the 24 May SR he still did not wish to make contributions into the RA. The SR said he wanted to maintain contributions into the GPP, but this might have been stated in error because it does not appear that he was making any self-contributions into the GPP at the time. No such contributions followed immediately after the advice. Instead, his evidence is that he did not begin self-contributing into the GPP until October 2023, around five months after the May advice.

On balance, I do not consider that these factors support the notion that Mr U sought to make pension contributions or that he looked for advice on doing so. Having said this, his initial contribution of £1,250 into the SJP RA appears to have happened as recommended, so it must be treated as such. In this regard, and for the reasons addressed above, the recommendation was unsuitable and he should have been advised to direct this specific contribution into the GPP.

Overall, the sum of the analysis above leads to the provisional conclusion that the SJP RA recommendations to Mr U were unsuitable for him.

With regards to suitability of the GPP's portfolio, given the availability of funds within the GPP rebalancing the portfolio would not have been a problem. Indeed, it is Mr U's evidence that he conducted fund switches in this respect in September 2023. There does not appear to have been much, or any, discussion at the time of advice about unsuitability of this portfolio and/or about addressing it. If there had been such discussion(s) I agree with the investigator's view that the GPP's high risk portfolio mismatched Mr U's medium risk profile, so it was unsuitable for him in this respect, but the matter should have been suitably resolved by fund switches within the GPP to achieve a medium risk portfolio. The idea of a significantly more expensive SJP RA (with fewer fund availability) would have been unsuitable as a solution.

SJP has referred to how his RP's value increased between May 2023 and May 2024. I have noted this, but it does not automatically mean the advice was suitable. To find or suggest otherwise would be an unfair assessment of suitability with the benefit of hindsight and solely on the basis of performance. Having said this, and without prejudice to the provisional redress provisions I shall set out below, it could be worth observing that the RA's performance might mean that, upon applying the redress benchmark, there is little or no financial loss to redress.

The OAS and OAC

Mr U's SJP RA (with the OAS) remains in place, and I have not seen evidence that he has expressly cancelled the OAS as SJP has invited him to do (should he be minded to do so).

Irrespective of my findings in this issue, his position on this needs to be clarified. In my draft redress provisions below, I will be addressing his wish to transfer the RA's value back into the GPP. It appears that this is likely to be possible, given that his GPP remains in place, but

in the event that it is not possible he could find himself remaining with the RA, so it is important to know his position, at least in principle, on whether (or not) the OAS is to continue.

On balance, I am not quite satisfied that this is a complaint issue for which Mr U seeks treatment or redress, or that it is an issue he has complained about. I agree with the investigator's explanation of our inquisitorial remit and, in another case, it is possible that we will nevertheless have remit to address an OAC issue even if the complainant has not explicitly highlighted it.

However, in Mr U's case, he appears – to date – to have taken no clear step to complain directly about the OAC or to terminate the OAS and OAC. He appears indifferent about the entire matter. Furthermore, and perhaps importantly, my draft redress provisions below already cover the unsuitability issue that he has complained about, and those provisions are based on an approach that takes into account that an OAC would not have been part of suitable advice.

Overall, and for these reasons, I make no finding for a refund of any of the OAC paid. Instead, I repeat that Mr U should consider and enact his position on whether (or not) to cancel the OAS (and therefore the OAC).

My Redress Provisions

If the provisional findings and conclusions in this PD are retained in my final decision, it is likely that I will be making, in the final decision, the redress provisions set out below.
It is important that the parties use the opportunity presented by this PD to highlight any aspect of the provisions below that they consider to be wrong or likely to be problematic. In particular, I draw their attention to the provisions for returning the total value in Mr U's RA back into the GPP without any costs and/or detriments to him.

The parties should look into and confirm the possibility of this and address it within their comments on the PD. If such a transfer is not possible the parties must say so in response to this PD. My draft redress provisions are based on the transfer to the GPP being possible. If it is not possible, and if I retain the findings in this PD, I will make compensation provisions in my final decision to cover the costs of Mr U maintaining the unsuitable SJP RA."

The PD then set out a draft of the redress provisions I intended to use.

SJP says the PD is wrong to find that Mr U was a reluctant client, or that he rejected some of the partner's advice.

It says there were three separate points of advice; the first recommendation, in the 4 May SR, was for regular gross monthly contributions of £1,250, Mr U agreed and the contributions were made from May to August 2023; the second, in the 12 May SR, was for a single contribution of £1,250; this was in addition to (not in replacement of) the regular contributions; he agreed again and the contribution was made on 30 May 2023; the third, in the 24 May SR, was the partial switch recommendation; these show that Mr U was not a reluctant client who had rejected the first two recommendations.

Nevertheless, SJP concedes that it has no evidence to support the partial switch recommendation, so on this basis it accepts that the advice was unsuitable.

Mr U confirmed, with screenshot evidence from his RA account, that he has made a total of £28,103 in contributions/transfer into the RA – five monthly contributions of £1,000 between May and September 2023, a single contribution of £1,250 on 22 May 2023, and the partial

transfer of £21,863 on 3 July 2023.

He also said – "*I do not recall receiving any invitations from SJP to cancel my plan with them. Additionally, I was unaware of any distinctions between the OAC and my account with SJP. I viewed them as a single account for all purposes. I take note of the comments made in the letter and will act accordingly. I would like to confirm that I have no intention of maintaining any account with SJP and would prefer to have all balances refunded to my GPP*."

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.

I have reconsidered Mr U's case, including both parties' comments on the PD, and I retain the conclusions, and main findings, in the PD – which I incorporate into this final decision.

I acknowledge SJP's concession that the partner's recommendation of the partial switch was unsuitable. I have noted its comments about his initial two recommendations. It is not clear from those comments if, besides its point about a misunderstanding in the PD, it maintains those recommendations were suitable or if it accepts that they too were unsuitable. In any case, for the main reasons given in the PD, I retain the view that all the recommendations to Mr U were unsuitable.

His comments (and screenshot evidence) confirm that, as SJP says, he followed all three recommendations, and that the second was not a replacement of the first. I acknowledge this.

Nevertheless, the PD's findings treated all the recommendations, and essentially found them unsuitable. The finding on Mr U's reluctance was not limited to whether (or not) he followed the first (regular contributions) recommendation. As quoted above, the PD referred to a number of factors that strongly suggest his overall reluctance around the time of advice and thereafter. I do not consider that confirmation of him following the first recommendation alters this view or the conclusion that the recommendations were unsuitable.

For the reasons given in the PD, the SJP RA, as a whole and from its inception, was unsuitable for Mr U, and that covers *all* the contributions and transfers he made into it.

I have noted his position on the RA/OAC – he has no intention of maintaining it and wishes to have all of the RA's value returned to the GPP – and I invite SJP to note the same. The draft redress provisions shared in the PD was set on the premise of returning total value from the RA to the GPP, so I will maintain that in the orders below. Neither party has said a transfer of the RA's total value back into the GPP will not be possible. Therefore, I will maintain the assumption that such a transfer is possible.

Putting things right

fair compensation

My aim is that Mr U should be put as closely as possible into the position he would probably now be in if he had been given suitable advice in May 2023.

As explained in the PD (and quoted above), that advice should have recommended rebalancing his existing RL GPP portfolio to match his medium risk profile.

To achieve this, I have used the notional value of the GPP as a performance benchmark for all the contributions made into the RA and the capital transferred out of the GPP into the RA. In the event that this notional value cannot be obtained, I have also referred to an alternative.

I am satisfied that what I have set out below, including provision for the alternative benchmark (based on Mr U's profile at the time of advice) if the notional value cannot be obtained, is fair and reasonable redress for him.

The start dates for the calculation of redress are the dates when each and every contribution payment was made into the SJP RA and the date when the capital partial transfer payment was made into the SJP RA. The premise for the calculation (and any redress arising from it) is the finding that, with suitable advice, Mr U would probably have made the contributions into the RL GPP and retained the capital partial transfer value within it, and he would have rebalanced the GPP's portfolio to match his medium risk profile. The GPP remains in place and continues to date, so the end date for the calculation of redress is the date of settlement.

what must SJP do?

To compensate Mr U fairly, SJP must:

- Compare the performance of the investment in the table below with the notional value benchmark in the table below. If the actual value is greater than the notional value, no compensation is payable. If the notional value is greater than the actual value, there is a loss and the difference is the compensation payable to Mr U.

- Pay the compensation into Mr U's RL GPP pension plan to increase its value by the total amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.

- If SJP is unable to pay the total amount into the pension plan, it should pay that amount direct to Mr U. Had it been possible to pay into the plan, it would have provided a taxable income. Therefore, the total amount should be reduced to notionally allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount, it is not a payment of tax to HMRC, so Mr U would not be able to reclaim any of the reduction after compensation is paid.

- The notional allowance should be calculated using his actual or expected marginal rate of tax at his selected retirement age. If he would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation.

- Provide the details of the calculation to Mr U in a clear and simple format.

Income tax may be payable on any interest paid. If SJP deducts income tax from the interest it should tell Mr U how much has been taken off. It should give him a tax deduction certificate in respect of interest if he asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Investment	Status	Benchmark	From ("start	To ("end	Additional

			date")	date")	interest
The SJP Retriement Plan (based on all values contributed and tansferred into it)	Still exists	Notional value from previous provider (RL); or alternative benchmark stated below.	For the contributions – the date each and every contribution was made; for the capital partial transfer value element – the date of transfer.	Date of settlement	Not Applicable

actual value

This means the actual amount payable from the investment at the end date.

notional [fair] Value

This is the value of the investment, based on the performance of a version of the RL GPP that suitably matches Mr U's profile (his medium attitude to risk), had it remained with the previous provider until the end date. SJP should request that RL calculate this value, if there are costs involved in doing so SJP must undertake such costs.

Any withdrawal from the investment should be deducted from the notional value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I will accept if SJP totals all those payments and deducts that figure at the end to determine the notional value instead of deducting periodically.

If RL is unable to calculate a notional value for the RL GPP, SJP will need to determine a fair value for Mr U's investment instead, using this alternative benchmark (and applying the same adjustments stated above) – the FTSE UK Private Investors Income Total Return Index.

The SJP RA only exists because of the partner's unsuitable advice to Mr U, and it is clear that he wishes to terminate the RA and to return his funds to the RL GPP. I consider it fair and reasonable that he should be allowed and assisted by SJP to achieve a switch/transfer of the SJP RA's total value back into the RL GPP without any costs or detriments to him. This must include a waiver of any associated EWC.

Upon his instruction to transfer the SJP RA's total value to his RL GPP – which should not be unduly delayed – and if such a transfer is possible without detriment to him, I order SJP to facilitate and arrange this for him at no cost to him, and to ensure that no EWC is applied, and to close the RA after the process is successfully completed (also at no cost to him). Any costs arising from this process must be undertaken by SJP.

why is this remedy suitable?

- If the previous provider is unable to calculate a notional value, then I consider the measure below is appropriate.

- The FTSE UK Private Investors Income Total Return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's

a fair measure for someone who was prepared to take some risk to get a higher return.

- I consider that Mr U's medium risk profile can be reflected in this benchmark, in the sense that he was prepared to take some risk to achieve higher growth for his pension capital. It does not mean that he would have invested in some kind of index tracker investment. Rather, I consider this a reasonable benchmark that broadly reflects the sort of return he could have obtained from investments, in a rebalanced RL GPP portfolio, suited to his objective and risk profile.

compensation limit

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £150,000, £160,000, £170,000, £190,000, £195,000, £350,000, £355,000, £375,000, £415,000 or £430,000 (depending on when the complaint event occurred and when the complaint was referred to us) plus any interest that I consider appropriate. If fair compensation exceeds the compensation limit the respondent firm may be asked to pay the balance. Payment of such balance is not part of my determination or award. It is not binding on the respondent firm and it is unlikely that a complainant can accept my decision and go to court to ask for such balance. A complainant may therefore want to consider getting independent legal advice in this respect before deciding whether to accept the decision.

In Mr U's case, the complaint event occurred after 1 April 2019 and the complaint was referred to us after 1 April 2023 but before 1 April 2024, so the applicable compensation limit would be £415,000.

decision and award

I uphold the complaint on the grounds stated above. Fair compensation should be calculated as I have also stated above. My decision is that SJP should pay Mr U the amount produced by that calculation, up to the relevant maximum.

recommendation

If the amount produced by the calculation of fair compensation is more than the relevant maximum, I recommend that SJP pays Mr U the balance. This recommendation is not part of my determination or award. SJP does not have to do what I recommend.

My final decision

For the reasons given above, I uphold Mr U's complaint and I order St. James's Place Wealth Management Plc to calculate and pay him redress as set out above, and to follow the orders (above) in terms of returning his SJP RA's total value to his RL GPP.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr U to accept or reject my decision before 20 January 2025.

Roy Kuku
Ombudsman