

The complaint

Ms P is represented.

Her complaint is that a St. James's Place Wealth Management Plc ('SJP') partner ('the partner') gave her unsuitable advice, between late 2020 and early 2021, to transfer her Defined Benefits Pension ('DBP') into her SJP Retirement Account ('RA'), a personal pension ('PP'). She says she was reluctant to do so at the time, because family and friends told her the DBP and its benefits were too valuable to lose, but she was convinced by the partner that the transfer was in her interest. She now considers it was not.

SJP disputes the complaint. In the main, it says Ms P had (and has) a substantial financial capacity, which meant she did not envisage a need for the DBP's guaranteed income in retirement and which influenced her objectives at the time of advice to access the Cash Equivalent Transfer Value ('CETV') of the DBP, to transfer it into the RA and to invest it within the RA.

What happened

On 15 December 2024 I issued a Provisional Decision ('PD') for this complaint.

The PD noted the following –

"One of our investigators looked into the matter and concluded that the partner's DBP transfer recommendation was unsuitable for Ms P. He mainly said –

- Ms P had a pre-existing relationship with SJP, having opened and held the RA since 2014.*
- At the time of advice, she had the following profile – aged 49 and single, with two dependents; self-employed annual income of around £70,000; additional annual (rental) income of around £95,000 from her Buy-To-Let ('BTL') properties; a high value savings account and around £30,000 in her current account; a Stocks & Shares ISA; pension provisions in her DBP, a Hargreaves Lansdown ('HL') Self-Invested Personal Pension ('SIPP') and the RA; a medium attitude to risk; and a planned retirement age of 70.*
- The partner noted that Ms P's objectives were to consolidate her pensions, access SJP's Ongoing Advice Service and its investment approach, gain flexibility in accessing her pension benefits (flexibility the DBP did not give), and gain flexibility around death benefits in order to leave a legacy fund. He also said up to 75% of her retirement income was to come from other sources (the BTL rental income and state pension) so she wouldn't need to take benefits from the DBP.*
- The grounds for complaint given by her representative are that the transfer recommendation was misguided because – it led with justification of the transfer instead of acknowledgement that a DBP transfer would not be suitable; the recommendation was confusing; it did not make clear to Ms P the valuable benefits*

she would be losing and high costs (including an early exit penalty) she would be facing; its reason for discounting a Stakeholder Pension alternative was flawed; and it breached several of the regulator's Principles for Businesses.

- SJP rejected the complaint on the grounds that – it did not consider the recommendation to be unsuitable; the partner met with Ms P several times and she was clear she would not need retirement income from the DBP; instead, her BTL rental income would cater for that; she was concerned about the DBP's death benefits not properly covering her children's interests; she was also concerned that its CETV was likely to fall and she preferred to access it and invest it; overall she understood the advice and information given to her (including information about charges).*
- The regulator – at COBS 19.1.6 of its Handbook – has made it clear that the starting point for consideration of a DBP transfer is the assumption that such a transfer is unsuitable, unless it can be demonstrated as being in the client's best interests. The DBP gave Ms P a secured guaranteed retirement income that faced no risks, so whilst she had other sources of income the DBP would still have been important to her. Its CETV was around £291,000. However, the partner's suitability report acknowledged that in order to match the retirement income the DBP guaranteed her, she would need around £1 million to purchase such income in the open market. The report also said that in order to achieve this level of capital the RA would need annual growth of 14.90% (up to the DBP's retirement age of 60) or 10.60% (up to Ms P's intended retirement age of 70). This would have been difficult to achieve. This shows that the transfer lacked financial viability, and was not in her best interests.*
- In terms of flexibility, there is evidence showing that Ms P was allowed, in the DBP, to defer her retirement age beyond 60, that the scheme had a bonus incentive for those who chose to do so, and it is noteworthy that at the time of advice she was a long way from age 60.*
- The partner should not have encouraged her to prioritise the pursuit of higher death benefits in the RA over her security in retirement. It is also unlikely that accessing SJP's investment approach was a genuine objective for her. Furthermore, there is no evidence of the risk to the future of the DBP scheme that the report says she was concerned about.*
- Overall, and acting in Ms P's best interests, the partner should have advised her to maintain the DBP and its benefits, not to transfer it into the RA (and lose its benefits). Had she been given this advice she is likely to have followed it. Redress should be calculated and paid to her, by SJP, on this basis, and in line with the rules for calculating redress for non-complaint pension transfer advice (as detailed in the regulator's Policy Statement PS22/13 and as set out in its Handbook at DISP App 4). SJP should also pay her an additional £200 for the distress caused to her by the unsuitable advice.*

Ms P's representative confirmed her agreement with this outcome.

SJP disputes the investigator's findings and conclusion, and it retains the view that the partner's DBP transfer recommendation was suitable.

It maintains that Ms P did not need retirement income from the DBP (either at the scheme's retirement age or at a deferred retirement age) given that her substantial assets and alternative sources of retirement income were always likely to be available to her in

retirement. It notes that she already had a significant amount of equity in her property portfolio at the time and that she planned to expand that portfolio – in this respect, it referred to an expansion she subsequently, and promptly, achieved through the RA and it says this shows how the transfer to the RA gave her the investment flexibility she sought at the time of advice (flexibility, it says, she did not have in the DBP).

SJP also highlighted parts of the partner's advice in which he allayed any concerns Ms P had about the DBP scheme, as the investigator said he should have done, and in which he highlighted that the CETV may not be good value when tested against the income to match scheme benefits. However, it says, the latter was not important to her because she did not believe she would need the DBP's guaranteed income in retirement."

The PD then made the following findings –

"The relevant regulatory requirements and guidance

The regulator's Handbook includes Principles for Businesses that SJP will be familiar with, and that the partner would/should have been familiar with in 2020, when he advised Ms P.

Principles 2, 3 and 6 require, in broad terms, firms to conduct their services with due skill, care and diligence, to make reasonable efforts to manage and control their affairs responsibly and effectively, and to uphold their customers' interests and treat them fairly. There is case law – Ouseley J, in *R (British Bankers Association) v Financial Services Authority* [2011] EWHC 999 (Admin) – which also confirms that The Principles are ever present requirements that firms must comply with. Therefore, these obligations were owed by the partner to Ms P throughout their dealings with each other.

Furthermore, the Conduct of Business Sourcebook ('COBS') section of the Handbook contains, at COBS 2.1.1R, the client's best interests rule which, as the title suggests, requires firms to uphold their clients' best interests. This essentially reinforces the requirement in Principle 6 for firms to uphold their customers' interests and treat them fairly. Like The Principles, the relevant COBS provisions (rules and guidance) were applicable to the partner's service to Ms P throughout their dealings.

Available evidence is that the partner gave Ms P abridged advice on the DBP transfer and then full advice on the DBP transfer in December 2020 (with, it appears, some follow-up correspondence in January and February 2021).

With regards to pension transfers (including DBP transfers), the regulator's 2017 alert included this – "Transferring pension benefits is usually irreversible. The merits or otherwise of the transfer may only become apparent years into the future. So it is particularly important that firms advising on pension transfers ensure that their clients understand fully the implications of a proposed transfer before deciding whether or not to proceed."

The rules and guidance in COBS – which firms must follow in giving regulated advice – include, for the specific matter of pension transfer advice, those in COBS 19.1. As they were in December 2020 (and up to February 2021), and with regards to the partner's full advice to Ms P, the rules [R] and guidance [G] in COBS 19.1 included the following –

"COBS 19.1.-1A[R] 01/10/2020

Except where a firm is providing abridged advice (see COBS 19.1A), this section applies to a firm which:

- (1) gives advice on pension transfers, pension conversions and pension opt-outs to a retail client; or
- (2) arranges pension transfers, pension conversions or pension opt-outs, in relation to:
- (3) a pension transfer ...”

“COBS 19.1.1C[R] 01/10/2020

- (1) A firm must make a personal recommendation when it provides advice on conversion or transfer of pension benefits.
- (2) Before making the personal recommendation the firm must:
 - (a) determine the proposed arrangement with flexible benefits to which the retail client would move; and
 - (b) carry out the appropriate pension transfer analysis and produce the transfer value comparator.
- (3) The requirement in (2)(b) does not apply if the only safeguarded benefit involved is a guaranteed annuity rate.
- (4) The firm must take reasonable steps to ensure that the retail client understands how the key outcomes from the appropriate pension transfer analysis and the transfer value comparator contribute towards the personal recommendation.
- (5) Prior to making a personal recommendation to effect a pension transfer or pension conversion, a firm must obtain evidence that the client can demonstrate that they understand the risks to them of proceeding with the pension transfer or pension conversion.”

“COBS 19.1.6[G] 01/10/2020

- (1) The guidance in this section relates to the obligations to assess suitability in COBS 9.2.1R to 9.2.3R.
- (2) When a firm is making a personal recommendation for a retail client who is, or is eligible to be, a member of a pension scheme with safeguarded benefits and who is considering whether to transfer, convert or opt-out, a firm should start by assuming that a transfer, conversion or opt-out will not be suitable.
- (3) A firm should only consider a transfer, conversion or opt-out to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer, conversion or opt-out is in the retail client’s best interests.
- (4) To demonstrate (3), the factors a firm should take into account include:
 - (a) the retail client’s intentions for accessing pension benefits;
 - (b) the retail client’s attitude to, and understanding of the risk of giving up safeguarded benefits (or potential safeguarded benefits) for flexible benefits, taking into account the following factors:
 - (i) the risks and benefits of staying in the ceding arrangement;
 - (ii) the risks and benefits of transferring into an arrangement with flexible benefits;
 - (iii) the retail client’s attitude to certainty of income in retirement;
 - (iv) whether the retail client would be likely to access funds in an arrangement with flexible benefits in an unplanned way;
 - (v) the likely impact of (iv) on the sustainability of the funds over time;
 - (vi) the retail client’s attitude to and experience of managing investments or paying for advice on investments so long as the funds last; and
 - (vii) the retail client’s attitude to any restrictions on their ability to access funds in the ceding arrangement;
 - (c) the retail client’s attitude to, and understanding of investment risk;
 - (d) the retail client’s realistic retirement income needs including:

- (i) how they can be achieved;*
- (ii) the role played by safeguarded benefits (or potential safeguarded benefits) in achieving them; and*
- (iii) the consequent impact on those needs of a transfer, conversion or opt-out, including any trade-offs; and*
- (e) alternative ways to achieve the retail client's objectives instead of the transfer, conversion or opt-out."*

The sum of the obligations and regulatory requirements (and guidance) set out above are directly relevant to considering the suitability (or otherwise) of the partner's DBP transfer recommendation to Ms P.

Suitability of the partner's DBP transfer recommendation

There is a fundamental conflict between each party's portrayal of Ms P's attitude towards her DBP at the time of advice. Overall, I consider that, amongst other key aspects, treatment of this conflict has a pivotal effect on the merits of the complaint.

SJP relies quite heavily on the stance that Ms P did not need retirement income from her DBP and that her preference was to access its CETV instead, in order to invest it and direct it towards the legacy fund she wished to put in place. In support of this stance, many of the contents of the partner's full advice suitability report from the time of advice present her as having the same attitude towards her DBP, to the extent that the report sometimes reads like the transfer was something she had pre-determined, or was leaning towards, prior to advice.

In contrast, Ms P's complaint submissions state that, around the time of advice, she had third-party input from friends and acquaintances (from the financial services sector) who told her not to lose the DBP (and its valuable guaranteed benefits) – which they described as the best pension she could have – that for this reason she was very reluctant towards the idea of a transfer, and that she agreed to the recommended transfer only because she was convinced by the partner that her personal and financial circumstances were different to the norm, so the transfer would be in her best interest.

As the guidance in COBS 19.1.6 [G] sets out, the starting point is the assumption that a DBP transfer is unsuitable. It can be deemed otherwise only where contemporary evidence demonstrates that it is in a client's best interests. A client's intention(s) and attitude towards the likely results and consequences of a DBP transfer are important considerations in determining whether (or not) such a transfer is in her/his best interests. Whilst SJP says her overall attitude towards losing the DBP was positive, Ms P essentially says it was not.

As I said above, there are many contents in the partner's full advice suitability report which support SJP's position. As far as is relevant to this issue, the report includes the following –

"To summarise your intentions, you want to take control of your funds now, and invest for capital growth, with the flexibility to access the funds in future if needed, and having the remaining funds passed on to your family and any other beneficiary of your choosing."

"There are a number of reasons why you want to transfer this pension now. Firstly, you have decided it's what you want to do in order to gain control over these funds."

"... your key motivation for wanting to transfer your ... final salary pension now, and to give up the guaranteed income is gaining control over the pension ... and potential to invest now over the longer-term while markets were relatively subdued.

You understand that the guaranteed income from the scheme provides you with security,

but you confirmed that you don't feel security is getting a fixed regular monthly income for the rest of your life, however long that may be and for your children and [sic] to get nothing (if aged over 23 at the time you pass away). You would rather take the transfer value, access the capital you need and invest the funds ..."

"You have a property portfolio that you wish to continuously expand into the future. By leaving your DB scheme as it is ... you would be faced with a more significant tax burden as you will not be able to stop or be flexible with the income that you receive from your properties. You are aware that based on our analysis you may not need to use any of the funds from the scheme and you felt it would be detrimental and not suitable to your circumstances as the income may not be needed and you did not want to be taxed needlessly."

"The ... final salary pension scheme have offered a current cash equivalent transfer value (CETV) of c. £291,303. You are concerned this may reduce in future given the scheme funding position and the effect of the pandemic ... and also if interest rates ultimately rise, and you prefer to transfer now and secure this CETV while markets are more subdued."

I explained that based on our analysis the CETV offered may not be good value for money when tested against the income received from benefits within the scheme, as the funds would run out 7 before your average life expectancy of 87. However, you were comfortable with this and wanted to transfer now as you are unlikely to require any of the benefits and are concerned that you may not have a spouse ... that can also benefit from the pension and in reality the overall value of the income is unlikely to be realised (as there would be no dependants pension if you passed away with your children aged over 23)."

"You have a solid base of liquidity with cash of c. £190,000 and your income covers your expenditure at present which will help bolster liquidity. You also have liabilities of c. £1,623,860 which you expect to be paid off before retirement. All of this gives you options ..."

"This rational approach of making sure you understood the pros and cons, whilst looking at all options and alternatives, makes you confident that transferring your TFL final salary pension is a decision you have arrived at with careful consideration. Having the flexibility to control your own destiny is a large part of the appeal for looking at accepting the cash equivalent transfer value. (CETV) rather than the guaranteed income."

Also, you did not like the fact that the pension would roughly halve on your death (or stop completely if your children were above age 23, as you do not have a spouse) compared to controlling the funds immediately and accessing the capital you need, gaining access to ongoing investment and financial advice. You felt more comfortable taking control of the funds now, and investing it to provide a legacy ...

We talked over the option of keeping your final salary pension ... and then using your disposable income to invest to create a legacy for your family, and any other intended beneficiaries. You were against this idea and you wanted control over the funds now given your concerns over the pension scheme company's future, the current market conditions, and the other details previously stated.

Losing what you see as the only benefit of the 'guaranteed' income albeit you also see this as a hindrance and restrictive in its monthly drip feed nature, in favor of all the flexibility to control your wealth, spend it how you see fit, and then to be able to pass this on to your family and other beneficiaries of your choosing, is definitely what you want, and fitting with your plans."

SJP considers this to be reliable evidence of Ms P's intentions and attitude towards her DBP at the time of advice, especially, it says, because the partner's full advice suitability report was signed by her to confirm her agreement with its contents. It has also shared with us comments from the partner, based on his recollections of the advice related events, and those comments reinforce SJP's position on her intentions and attitude.

It should be noted that there were two SJP partners involved in this case. One was Ms P's financial adviser, who she had known for some years, and he referred her to the other partner for the specific purpose of receiving specialist DBP transfer advice. The partner specialising in DBP transfer advice then proceeded to make the relevant transfer recommendation.

Ms P has made strong submissions disputing the assertion that the report was agreed and signed by her, to the extent that she cast doubt over the legitimacy of the signature that appears in the document. I have looked into this. Overall and on balance, I am not persuaded that there is cause to doubt the signature in the document. It is slightly different to the signature in the abridged advice report issued to Ms P. However, it appears to be the same as the signature in the letter of authority she signed for her representative. It therefore appears to be her signature, or a signature that she uses.

She has also queried the fact that the report is dated in December 2020, on a date before, she says, a further advice meeting with the partner that subsequently happened in the same month, and before January 2021 when the transfer recommendation was completed.

I have looked into this too. The report is dated 7 December 2020. Her signature in the document is dated 23 February 2021, so this post-dates her reference to the recommendation being completed in January. It is also worth noting that she has not said the transfer advice was not given until January 2021. It is within her complaint submissions that in December 2020 she was aware the transfer recommendation had to go to SJP's compliance function in order to be approved, and that she received confirmation in January 2021 that it had been approved. Therefore, the awareness in December 2020 that she refers to means the transfer advice had already been given at the time.

In any case, Ms P does not appear to dispute the partner's abridged advice report, which included the following summary of her objectives and intentions –

“My understanding of your retirement planning objectives is that you want:

- Potential to generate an income in the future by taking capital without income (only if needed)*
- Obtaining more flexibility when taking benefits from your pension*
- Increasing the flexibility of the benefits payable on your death*
- Consolidation of your pension provision*
- Potential for tax planning as you want the ability to only take the funds you need from your pension and utilise other assets and income streams tax efficiently*
- Addressing your concerns about the company financial health and scheme funding*
- Legacy creation as may not need all the benefits from the ... Final Salary Pension*
- Accessing the St. James's Place Approach to Investment Management*
- Ensuring you have ongoing advice and service on your retirement planning”*

“To summarise your intentions, you want to take control of your funds now, and invest for capital growth, with the flexibility to access the funds in future if needed, and having the remaining funds passed on to your family and any other beneficiary of your choosing. You want to be able to access financial planning advice on these funds, consolidate your existing

schemes and invest via the St. James's Place approach, as well as gain flexibility in tax planning and ability to access the pension flexibly and take capital without having to take income at the same time."

"... you believe that your ability to fund your retirement would not be affected by significant losses to some or all of a fund transferred from a Defined Benefit scheme because up to 75% of your income need in retirement will be met by guaranteed rental income and pension income sources which also rise in line with inflation each year. You also have cash of c. £190,000, c. £145,306 in ISA investments, c. £132,862 in personal pensions, and the ability to sell rental properties or downsize your main residence if more liquidity is desired."

These are broadly the same as some of the contents in the full advice suitability report describing Ms P's objectives and intentions.

Overall and on balance, I consider that the partner's abridged advice and full advice reports accurately describe the objectives and intentions held by Ms P and presented to him (by her) at the point of advice.

I have reached this conclusion because I am satisfied that both reports were issued to and received by her, were considered by her and were signed by her to confirm her agreement with their contents. Those contents included the statements about her objectives and intentions as quoted above, so her signatures mean she agreed and affirmed them too. I have noted some parts of her complaint submissions where she refers to independently verifying some of the things she was told by both partners. Therefore, it seems she was the type of client who verified information for the sake of accuracy (to the extent of verifying advice she received) and that she would not have agreed to the advice documents if she was not fully satisfied that their depictions of her profile were accurate. It is also inconceivable that she would have proceeded with the transfer without receiving and agreeing the full advice report. Such agreement was required for the execution of the recommended transfer.

Overall and on balance, I am also satisfied that the DBP transfer idea was probably mainly initiated by Ms P.

Her initial SJP partner was not a specialist in DBP transfers, hence the referral he made to the specialist partner. It is possible that he (the initial partner) could have raised the subject and then referred to his specialist colleague, but it is Ms P's evidence that in July 2020 she left her employment and "started the process of reviewing" the DBP. Previously, she says, her discussions with the initial SJP partner had been about adding her HL SIPP's value into the DBP. Therefore, something changed from her previously looking into adding to the DBP to her considering reviewing the DBP itself, and I have not seen evidence of an SJP partner playing a role in this change of considerations. Furthermore, there appears to have been nothing, in discussions with the initial SJP partner, that related to transferring the DBP – until after she decided to review it (around mid-2020).

As I mentioned above, Ms P has also mentioned that she took on board comments from friends/acquaintances about the idea of transferring the DBP. This too supports the conclusion that the idea was probably her initiation – whereby she reached the idea within her own considerations, then sought and obtained different people's views on it (to aid those considerations). Despite, as she says, those friends/acquaintances discouraging her, she proceeded to seek the specialist advice nevertheless. This is not a criticism. She was entitled to do so, in order to inform her considerations. However, it is further evidence that, as presented in the report excerpts quoted above, the DBP transfer idea was one she was closely attached (or committed) to and one she intended to pursue.

Like the friends/acquaintances she had spoken to, the specialist partner also gave Ms P information which essentially confirmed that, as a starting point, the DBP was a valuable pension asset that would not be in her interest to lose.

His abridged advice included the following –

“We discussed the risks inherent to any transfer from ... a Defined Benefit Scheme, which can be broadly split into four categories; longevity risk, inflation risk, investment risk and interest rate risk.”

“By transferring from a scheme where you are guaranteed an income for life, you would be accepting responsibility for the risk that your funds could run out during your lifetime.”

“A guaranteed pension from ... a Defined Benefit scheme will include some form of indexation. Indexation provides some protection against the impact of inflation over the course of your lifetime.”

“A Defined Benefit scheme will provide a pre-determined level of pension over your lifetime irrespective of the investment returns it achieves, whilst the income that can be provided by a Defined Contribution plan is dependent on the performance of the underlying investments. Transferring out of a Defined Benefit scheme means that you are accepting the risk that the growth achieved by your pension fund might not be sufficient for your needs.”

The covering letter for his full advice included the following –

“There are Appendices to this report which contain important further details and background to support my advice and you must consider the information in this report in conjunction with the booklet I gave you titled ‘Defined Benefit Pension Transfers - Your Comprehensive Guide’. This booklet explains the risks associated with my recommendation to transfer out of your defined benefit pension scheme. We discussed those risks in detail when we met and you are aware that, by transferring out, you will lose the security of the guaranteed lifetime income which would be provided by your existing scheme. You confirmed you were comfortable with the risks of transferring.

You should also review the Pension Transfer Analysis and Transfer Value Comparator which consider the benefits in your ... scheme and the cashflow analysis that I prepared. These documents should be considered as integral parts of this report.

The cashflow analysis that I have prepared includes assumptions about how funds will perform, inflation levels and what your requirements for income and capital will be in the future. The further ahead the analysis looks, the greater the uncertainty around these assumptions; in particular around inflation and the level of income and capital that you may require in future. Projections beyond the short term (5 years) are particularly likely to be affected in this way. When making your final decision you should consider the risk that these assumptions will not reflect reality.”

The DBP booklet enclosed with the report sets out the high value placed on DBPs, the reasons for that, five common reasons to transfer them, five common reasons to retain them and, towards its conclusion, the following statement –

“The introduction of pension freedoms in 2015 has fundamentally changed the way individuals need to think about retirement planning ... for some defined benefit scheme members, a transfer may now be suitable ... for most people, retaining the benefits of the defined benefits pension is likely to be in their best interests.” [my emphasis]

The report summarised the outcomes of the Pension Transfer Analysis and the Transfer Value Comparator exercise, which confirmed that the RA would need annual growth between 10.60% and 14.90% (depending on retirement at either 60 or 70) to match the DBP's benefits, and that despite the CETV of £291,303 if, at the time of advice, Ms P were to replace the cost of the DBP's guaranteed income she would need around £1 million. This section of the report concluded that – "... based on the Comparator results you are not likely to be able to replace the guaranteed income lost on transfer."

Returning to the regulatory rules and guidance, and mindful of the aforementioned evidence, I draw the following provisional conclusions –

- The primary assumption that a transfer of Ms P's DBP would be unsuitable and not in her best interests applied to, and existed in, her case. Both parties were clearly aware of the downsides of the transfer, and the evidence I have mentioned above (from the partner's advice) shows this.*
- She was made aware of this assumption outside of the advice from the partner, through comments from her friends/acquaintances. It is her evidence that she conveyed these comments to both SJP partners. Then, in both the abridged and full advice reports, the DBP specialist partner gave her the information, amongst others, quoted above, which essentially told her that the starting point for considering a transfer was the position that it would not be in her best interests.*
- Reading through both reports, I consider that the partner was mindful of the assumption of unsuitability throughout. However, he had to balance that with what appears to have been Ms P's predetermined intention to conduct the transfer. This is illustrated frequently in the full advice report, whereby references are consistently made to this goal/intention (and its reasons) where the serious negative aspects of the transfer are addressed – with the former being used as grounds to override the latter.*
- There are also many references in the report, for the same purpose, to the financial and personal profiles presented by Ms P as reasons why she and the partner believed the negative aspects were broadly inapplicable to her. Those references and profiles all essentially pointed at the facts that she had wider and substantial wealth beyond the DBP to cater for her retirement income, income from the DBP was therefore bound to be somewhat redundant in her retirement (and, for tax purposes, it might even be detrimental), she considered the CETV from the DBP would serve a much better purpose by being actively invested, and that such purpose would also benefit the legacy fund she sought to put in place for her children (which the DBP would not facilitate).*
- Of course, the partner was the expert in the relationship, so I have considered whether (or not), and despite the profile/goal/intention (and reasons) presented by Ms P, he nevertheless should reasonably have advised against the transfer.*
- As set out in the rules and guidance quoted above, there is no absolute requirement upon firms to always advise against a DBP transfer. The requirements relate to the process firms must follow in providing advice on such a transfer, and the guidance is about the primary assumption they should make in their consideration of the advice. However, the guidance then continues to set out a basis on which a DBP transfer could be suitably recommended.*
- In summary, this could happen in circumstances where a firm has been able to*

clearly demonstrate that the transfer is in the client's best interests, and where it has done so based on evidence about the client's intentions, her/his attitude towards the loss of the DBP's benefits, her/his attitude towards investment risks, her/his income needs and alternative ways to achieve her/his goals (other than a DBP transfer).

- In Ms P's case, and for the reasons given above, I am satisfied, on balance, that the partner took into account – her goals and intention to transfer the DBP (including her investment and legacy fund intentions for its CETV); evidence of her position that the DBP's benefits would probably be redundant to her in retirement; evidence to support that position, in the form of the alternative sources of retirement income she already had in place (as I quoted above – “You also have cash of c. £190,000, c. £145,306 in ISA investments, c. £132,862 in personal pensions, and the ability to sell rental properties or downsize your main residence if more liquidity is desired”); evidence of her total net income at the time (around £165,000) and of the value of her BTL property portfolio (around £2.4 million, with mortgage liabilities of around £1.2 million that was expected to be settled before retirement), both of which added support to the estimation of wealth (outside of the DBP) that she could draw from to set up additional pension arrangements and/or that she would likely have in retirement (from which she could potentially fund her retirement); evidence of her familiarity with investment risks (in her BTL property investment pursuits, her Stocks & Shares ISA, her HL SIPP and her pre-existing SJP RA); and evidence that the notion of an alternative way to achieve her goal was somewhat irrelevant, because her goal was focused on making use of the DBP's CETV, specifically.*
- In practice, additional factors like a client's age (and how far she/he is from retirement) and marital status can also support the suitability of a DBP transfer.*
- In Ms P's case, she was around 20 years away from her intended retirement age, which meant she had a long/longer period to invest the CETV and to set up any additional pension arrangement she might have later desired (in addition to the SIPP and RA). She was single and available evidence suggests she did not anticipate this changing in the future. Of course, the future in this respect could not reasonably have been viewed with certainty, because circumstances can change. However, her view at the time was that this would not change. Her likelihood to remain single meant her concerns about the lack of meaningful death benefits in the DBP (especially for her children, in the event of her passing) were probably fair considerations against the DBP. In contrast, the RA had the following death benefits (as stated in the full advice report) – “If you die before 75, your beneficiaries will be able to take benefits from your pension fund as either a tax free cash lump sum paid to them or to a trust, or as tax free income or a combination of both. If you die after 75, your beneficiaries will be able to take benefits from your pension fund as either a lump sum or income subject to Income Tax payable at their marginal rate. If benefits are paid to a trust they will be subject to a 45% death tax charge.”*
- The partner would have been mindful of these aspects too – and there are parts of his report which show, or at least suggest, that he was.*
- Overall, on balance and for the above reasons, I am not persuaded that the partner was wrong to recommend the DBP transfer – or, I am not persuaded that he was wrong not to advise against it.*

The RA recommendation came with a total annual charge of 1.98% (inclusive of an annual 0.5% charge for ongoing advice and an annualised calculation of the 4.5% initial advice charge). Ms P had held the RA for a number of years, so she would probably have been

broadly familiar with these charges. There were no such charges in the DBP. The RA's Early Withdrawal Charge ('EWC') was 6% (decreasing to zero by 1% each year). There was no equivalent in the DBP.

Therefore, Ms P faced the prospect of fees/charges in the RA, as summarised above and as calculated based on the CETV (and then its value as part of the RA thereafter), that she previously did not have meet. The illustration prepared for the DBP transfer, in February 2021, projected that all charges/fees would adversely impact annual growth by 2%.

These costs, and their impact on growth, were important factors to consider, in terms of suitability of the transfer advice. A strategy to overcome the costs and their impact would have been needed, and it is reasonable to expect this to have been part of the partner's advice to Ms P.

There is evidence of some advice in this respect (in more of a general sense) in the full advice report. It included the following –

"Your history of previous investment decisions demonstrates that you have a significant degree of investment experience. This is demonstrated by a history of investing in in equities via your existing pensions and ISAs with St. James's Place and Hargreaves Lansdown which you have held for many years. You understand the relationship between risk and reward and that when you invest, your funds can go up as well as down, and that with drawdown your funds may run out."

"... the time frame for your investment is more than 15 years because you expect these funds to be used throughout your retirement, accessed flexibly, and remain invested for the foreseeable future, and then passed to your intended beneficiaries."

"As your investment is being made over a long time horizon, it is reasonable to expect that larger fluctuations in the value of the investment in the short term may be evened out over the longer timeframe. Accordingly, investments slightly higher on the risk scale might be more appropriate for this investment than would be the case if investing over a shorter period of time. This was considered and we felt the funds selected were suitable and in line with your risk profile, and we will continue to monitor the funds to ensure they remain appropriate."

The underlying funds (and allocation percentages) recommended for investment of the CETV were the – Emerging Markets Equity fund (20%), Global Growth fund (20%), Global Quality fund (10%), International Equity fund (20%), North American fund (10%), Sustainable & Responsible Equity fund (20%).

Overall and on balance, I am not satisfied that the partner set out a meaningful strategy which went beyond the broad and generic statements quoted above, and that directly addressed the annual 2% total costs impact on growth that was identified in the illustration. Such an impact could not reasonably be ignored. I do not say or suggest that the partner ignored it completely, but he does not appear to have tackled it head-on in his advice – which he should have done.

Having said this, given the particular circumstances of Ms P's case, I do not consider that the partner's shortcoming in this respect means the overall transfer advice was unsuitable.

I am persuaded that she would probably have transferred the DBP in any case. I gave reasons above for the finding that the transfer was probably initiated by her, and I consider she was committed to it for the reasons reflected in the advice reports – so she probably would have pursued it in any case.

This means, there would always have been costs arising from the transfer of the DBP – to an SJP RA or to any other pension product. They would have included product and investment costs because Ms P sought to maintain a pension wrapper and to actively invest the CETV. There would also have been advice related costs because, in most cases, regulated advice was/is required for a DBP transfer. In other words, for Ms P and in her circumstances, it is more likely (than not) that the impact of costs was unavoidable.

Overall, the equity-based portfolio recommended to Ms P appears to have been tilted towards the higher end of her medium risk profile. However, the advice explained the reason for this. She had experience of investment risks and she had a long investment horizon, which allowed time to even out value fluctuations. I do not consider that the portfolio had, overall, a high risk profile, and, overall, I do not find that it mismatched her medium attitude to risk.

The 15+ years investment horizon, and the fact that she was around 20 years away from her intended retirement age, meant the portfolio had sufficient scope/time for growth to cater for her objectives and to overcome the impact of charges. The equity basis of the portfolio also aided the pursuit for growth that she wanted. The long-term time horizon also meant the EWC was unlikely to be an issue at the time of advice, because it reduced to zero after six years. Of course, no level of performance was guaranteed, so it was not certain that the investment horizon would lead (amongst other factors, like the portfolio's profile and ongoing monitoring and advice that was associated with the recommendation) to achievement of her objective and to nullification of the costs impact, but there was a reasonable probability that it would do so over the course of the 15+ years.

Provisional Conclusion

For the reasons given above, my provisional conclusion is that I am not persuaded SJP did anything wrong in the DBP transfer advice given by the partner to Ms P in 2020. Overall and on balance, I do not consider that the advice was unsuitable. As such, I do not find a basis for redress or compensation."

Ms P and her representative have strongly disagreed with the PD.

Her representative mainly said –

"[Ms P's] written testimony of the advice process is at odds with the documentation and evidence produced by SJP ... She was told that the sales/Zoom calls were recorded; indeed, all telephone calls should be recorded as a matter of course; she has confirmed that the adviser asked her permission before each Zoom call for it to be recorded. This is a fundamental requirement by the FCA, and your opinion appears to have not considered this serious Rule breach. SJP has been asked on numerous occasions to provide a copy of the Zoom/telephone calls. No such copies have been forthcoming, nor were they included in the DSAR that was supplied. Unless this information is supplied, we believe that the Report(s) cannot be relied upon in isolation."

"... the only reason Ms P proceeded with this transfer was due to the pressure she was put under by the SJP Adviser, who wrongfully advised her that the [DBP scheme] was on the verge of bankruptcy and that she needed to move her money, or else she was of severe risk of losing her fund."

"... the dates of the paperwork evidence that she was "rushed and coerced" into moving her pension"

“... the Report was constructed in a manner that was not compliant with expert financial advice, and should have been constructed as an “ [sic] “Insistent Investor Report” not to transfer, however, for her own reasons (namely her concerns about [the DBP scheme] going into bankruptcy, told to her during these telephone/Zoom calls) was “insisting to transfer against advice not to do so”.

“In summary these reasons were never documented, and all records of the sales process SJP adopted have been “lost”.

“We would therefore request that before you issue your Final Decision you request these records from SJP.”

“... in the Reports by SJP:

... Page 15 states that ‘the table below does NOT show the performance required to meet your needs in retirement using pensions flexibility’. The omitted information is crucial and the determining factor, ie whether a recommendation to transfer is positive or negative. The whole nature of the recommendation is flawed by omitting this crucial measure of the viability of the advice ...

Page 9 mentions ‘Addressing your concerns about the company financial health and pension scheme funding’. This was the key reason [Ms P] agreed to the transfer. It was an over-riding issue which was used in order to frighten the client to not lose all her money.

Page 26. The bias of the advice to transfer is demonstrated by cursory mention of a significantly less expensive use of a Stakeholder pension. A comparison of the effect of charges between the high charging version sold to the client, and a Stakeholder pension, would have demonstrated the poor value for money of the scheme sold.”

“The advice to transfer was given verbally over Zoom in December 2020 and [Ms P] maintains that she has never received the second Report. The signature on the second Report was dated 23 Feb 2021 which was after SJP proceeded with the transfer. She has stated that no copy of the Report is shown in her SJP Account, nor is there any record in her emails of receiving the Report.”

“As documentary evidence, we have attached copies of emails showing that SJP went ahead with the transfer before the advice report was ‘signed’ in February 2021.”

Ms P submitted a statement, which mainly endorsed and emphasised some of her representatives comments and which, in addition, mainly said –

“I was told the transfer was not possible, and the reason given to me at that time was because I was a single earner and would have greater risk as the multiple offered by [the DBP scheme] was not enough. When I asked what I should be offered it was stated that it's needs to be nearly double.”

“I would also like to make it clear that I was always told [the specialist partner] was independent adviser, but he was SJP partner. I was always given the name Lucerne Wealth, and never connected that he was an SJP partner, so how was the advice independent. I did take an initiative to actually speak to another adviser whose name I can't remember now, but was told [the specialist partner] was best and since SJP worked with him it was better option for me. I would like to raise this as an issue as I feel this all a setup with one goal of taking my investments under SJP management . SJP was earning from me throughout the process so how can the decision be that is in my interest.”

"When I said I was thinking of leaving ... [the financial adviser partner] had already started to convince me that taking the pension would be the best thing as I should get the money ASAP as DB pensions are only for couples and adults with young kids and if I died, my family would get nothing ... By doing the transfer they would get the fund and SJP would grow it even further ...

[He] had put into my head that I would lose the pot ... should I die when my children are adults. This is something I never knew of before ... I had asked some friends and family about me looking to transfer out of final salary scheme, and they had thought I was mad and it was something everyone wanted in terms of pension, so it didn't make sense to give it up. I raised this concern with [him] and he said he was my financial adviser with SJP backing and they do this all the time for their clients. I would be protected."

"I wish to make it clear, and I hope my honest and true statement herewith substantiates this, that I am absolutely not a "sophisticated investor" ... The whole point of moving to SJP was get proper investment advice and guidance. I genuinely believe that I was misled and scared into making the wrong financial decision."

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 the complaint, including Ms P's and her representative's comments on the PD. Having done so, overall and on balance I am not persuaded to depart from the findings and conclusions in the PD – which I retain and incorporate into this decision.

First I address her representative's submissions.

The task before me is to determine Ms P's complaint. Our service is not the industry regulator. Where matters, and evidence, of regulatory breaches are directly relevant to determining a complaint they can be considered for that particular purpose, but not for the isolated purpose of holding a firm accountable for a regulatory breach. It is the regulator's remit, not ours, to investigate allegations about firms breaching its rules and regulations and, if proven, to hold them accountable for that.

Therefore, the points about SJP's record keeping of Zoom calls is noted, but any regulatory breach in that respect – in isolation – is not for me to investigate or determine. In as far as it relates to the issues in Ms P's complaint, I do not accept the argument that the Zoom calls must be obtained before I can make findings on the reports agreed between the parties. The PD, as quoted above, dealt with this in some detail and set out the reasons why both the abridged advice and full advice reports stand as reliable evidence of what was discussed and agreed – including the profile Ms P presented and agreed in the course of SJP's advice.

With regard to her profile, I made findings in the PD about Ms P's signature on the report documents; about the date of the full advice report (which bears her signature); about the abridged advice report (which also bears her signature); about the fact that whilst she disputes the full advice report she does not dispute the abridged advice report; about the fact that the latter (which she signed and agreed) presents broadly the same description of her profile as the former; about the balance of evidence showing that the DBP transfer was probably her pre-determined idea despite notices and warnings (which could/should have discouraged her) from her friends, acquaintances and in the SJP reports that such a transfer would be unsuitable (or, as reflected in the reports, the primary assumption of such unsuitability).

Focus on the legitimacy (or otherwise) of the full advice report does not address the other findings on Ms P's profile in the PD, and as noted in the paragraph above.

I am not persuaded by the arguments that Ms P was pressured or coerced into the DBP transfer pursuit, and/or that SJP should have used an *insistent client* approach in its advice. The body, and balance, of available evidence – which I addressed in the PD – does not support either argument.

The PD referred to information supporting, on balance, the conclusion that she probably predetermined the pursuit and remained committed to it despite comments from others against it, despite sections of SJP's advice warning against it and even after she verified SJP's advice independently. As I said in the PD – *"I have noted some parts of her complaint submissions where she refers to independently verifying some of the things she was told by both partners. Therefore, it seems she was the type of client who verified information for the sake of accuracy (to the extent of verifying advice she received) and that she would not have agreed to the advice documents if she was not fully satisfied that their depictions of her profile were accurate."* I consider that this finding can reasonably be extended to the transfer pursuit as a whole, whereby, on balance and for all the reasons treated in the PD, I find it broadly unlikely that Ms P could have been pressured, in any way, into the transfer.

With regards to the insistent client approach, it is somewhat apparent that such an approach would have been redundant in the circumstances of Ms P's case. As I addressed in the PD, there was no meaningful mismatch – to the extent of rendering the advice unsuitable – between her profile, SJP's advice and the specific rules relevant to SJP's advice. In the circumstances of her case, I did and do not find that the advice was unsuitable. It follows that I do not consider there was a need for SJP to use an insistent client approach, there was no such need.

In response to the point about performance information, the PD already noted that the partner did not set out the type of investment strategy that he should have set out, but, for the reasons given (as quoted above), I did not find that this alone meant the advice was unsuitable.

In terms of Ms P's representative's other comments, the PD already dealt with the timing/dating/signing of the full advice report; I do not consider that the point about the stakeholder pension alternative makes a difference, given the finding about Ms P's commitment to the DBP transfer idea; and the same applies to the point concerning the state of her employer's/ex-employer's financial health.

I now turn to Ms P's comments.

"I was told the transfer was not possible, and the reason given to me at that time was because I was a single earner and would have greater risk as the multiple offered by [the DBP scheme] was not enough. When I asked what I should be offered it was stated that it's needs to be nearly double."

I consider that her statement above could be viewed as further support for the finding that she was probably committed to the DBP transfer, and continued to pursue it, despite multiple indications (she received) against it. I acknowledge her representative's argument about her being pressured, and I expect they will cite that argument in this respect too. However, the above statement is not isolated. It is one of a number of statements in Ms P's submissions in which she concedes to having continued with the DBP transfer pursuit despite repeated notices of reasons not to.

Ms P has stated –

“I would also like to make it clear that I was always told [the specialist partner] was independent adviser, but he was SJP partner. I was always given the name Lucerne Wealth, and never connected that he was an SJP partner, so how was the advice independent. I did take an initiative to actually speak to another adviser whose name I can't remember now, but was told [the specialist partner] was best and since SJP worked with him it was better option for me. I would like to raise this as an issue as I feel this all a setup with one goal of taking my investments under SJP management . SJP was earning from me throughout the process so how can the decision be that is in my interest.”

In this respect, I note that the abridged advice report, which she signed and does not dispute, is undersigned by the specialist partner alongside the following –

“Clearwater Wealth Management
St. James's Place” [my emphasis]

The full advice report is undersigned by the specialist partner alongside the following –

“Lucerna Wealth
St. James's Place” [my emphasis]

Both reports' contents also have references to SJP. Overall, I do not accept that Ms P was unaware the specialist was connected to SJP.

With regards to Ms P's comment about discussions with the financial adviser partner before she left her employment, I do not have contemporaneous or recorded evidence of those discussions. However, based on evidence I do have, I said the following in the PD – *“... it is Ms P's evidence that in July 2020 she left her employment and “started the process of reviewing” the DBP. Previously, she says, her discussions with the initial SJP partner had been about adding her HL SIPP's value into the DBP. Therefore, something changed from her previously looking into adding to the DBP to her considering reviewing the DBP itself, and I have not seen evidence of an SJP partner playing a role in this change of considerations. Furthermore, there appears to have been nothing, in discussions with the initial SJP partner, that related to transferring the DBP – until after she decided to review it (around mid-2020).”*

I note Ms P's point about not being a sophisticated investor. However, the PD's findings and conclusions – which also stand as this decision's findings and conclusions – did not rest on her being a sophisticated investor.

My final decision

For the reasons given above, I do not uphold Ms P's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms P to accept or reject my decision before 27 January 2025.

Roy Kuku
Ombudsman