DRN-5255682

The complaint

Miss C says a St. James's Place Wealth Management Plc ('SJP') partner ('the partner') gave her unsuitable advice in relation to her SJP Retirement Account ('RA') resulting, since its inception in 2019, in its underperformance and in a loss of its nominal and real-term value; that its underperformance was concealed from her; that the RA's investments unsuitably lacked diversity because, unknown to her (and as a matter of conflict of interests), they were mainly SJP funds; that her financial loss was compounded by SJP's unreasonable and excessive Ongoing Advice Charge ('OAC'), which she objects to; and that, in the circumstances of her case, the RA's exit penalty should not have applied when she transferred (out) her pension in 2024.

What happened

One of our investigators looked into the complaint and concluded it should be partly upheld. She summarised Miss C's profile at the time of advice mainly as follows –

- she was in her late 40s and she planned to retire at age 56;
- she owned her own company;
- she received the initial advice alongside her partner, with whom she lived (without dependents);
- she had joint savings of £110,000 and jointly owned assets worth £597,000;
- she was a basic rate taxpayer;
- she had an emergency fund of £5,000;
- she jointly owned Buy-To-Let ('BTL') properties;
- she was a member of a Money Purchase Scheme ('MPS');
- she had three Personal Pensions ('PPs'), including the SIPP, worth, in total, around £25,000;
- in addition to her pension arrangements she planned to sell her company to meet her retirement needs;
- she had a lower medium risk profile;
- and addressing her concerns and dissatisfaction with the SIPP's charges and volatility in the performances of the other PPs' investments formed part of her objectives.

The investigator did not consider that the initial advice to Miss C, with regards to the recommended RA and its investment portfolio, was unsuitable. She only upheld the complaint about a specific request Miss C made, around October 2023, for a breakdown of the summary of charges SJP had issued to her in that month. The investigator noted that up to July 2024 SJP had yet to meet the request, and she found that the delay was unreasonable. She asked SJP to provide the breakdown to Miss C and to pay her £250 for the trouble and inconvenience caused to her by the delay. SJP subsequently provided us with the breakdown (ending June 2024), which we shared with Miss C.

I issued a Provisional Decision ('PD') for the complaint on 10 December 2024, in which I provisionally concluded that it should be upheld. My findings on merit were as follows –

"*<u>The Partner's Initial Advice</u>*

His 28 January 2019 Suitability Report ('SR') included reference to the following aspects of Miss C's profile at the time – she had the three PPs mentioned in the investigator's view – a Lifetime SIPP and two Aviva Group PP's ('GPPs'); there was also the MPS for her company, which was held with the National Employment Savings Trust ('NEST'); her objectives were retirement planning, capital preservation, her desire to make an employer contribution (from the company she operated) into her pension arrangements and having annual reviews; and the earliest age she would consider retiring was 56.

He recommended the setting up of the SJP RA for the single employer contribution of £10,000. The SR notes that the contribution is unlikely to be enough to serve her retirement needs, but that she also had a plan to sell her business in the future in order to meet those needs.

It also notes that the contribution could be made into the NEST MPS and that the RA was more expensive than the MPS by 1.48% per year – in this respect, the partner appears to have averaged the MPS' initial charge of 1.8% over around 10 years, added the annualised result to its ongoing charge of 0.30% per year and then deducted the total result from the RA's AMC of 1.99% per year.

The SR says this 1.48% difference was also the annual outperformance needed in the RA to match the fund Miss C could have had if she made the contribution into the MPS. Nevertheless, the partner justified his recommendation of the RA solution on the basis that it came with the SJP OAS, which she would not have if she used the MPS. Later in the SR the partner discounted the use of a Stakeholder pension for the contribution, on the basis that it would not allow for adviser fee deductions from the pension (thereby requiring such charges to be paid from taxed funds).

It also confirms Miss C's low/medium risk profile, her £10,000 emergency fund, her BTL assets (and associated mortgage liabilities), the 'Conservative' low/medium risk profile for the investment portfolio recommended for the RA (along with risk warnings) and a summary of the EWC provisions.

The Partner's SR of 18 February 2019 is presented in a similar format, with similar contents, but it focuses on moving the remaining value in the Lifetime SIPP to the recommended RA. His covering letter stated that in the aftermath of Miss C's successful FSCS claim and the SIPP being put into administration, its remaining value needed to be transferred – and the partner said it should be transferred to the RA. This transfer, alongside a desire to consolidate her pensions and reduce costs, and alongside the goals previously stated in the January SR were set out as her objectives.

The SIPP's transfer value at the time was around £2,300. Again, the partner referred to the NEST MPS and acknowledged that it could receive the transfer of this value. He also said that the ongoing costs of the MPS was 1.52% per year cheaper than that of the RA, and that this difference was the annual outperformance required in the latter to match the fund that could have been achieved if the SIPP's value had been transferred into the former. However, he used the same justification as that in the January SR – that the RA solution came with the OAS, which Miss C would not have in the MPS.

The SR mentions the same risk profile (for Miss C and for the recommended investment portfolio), investment risk warnings, emergency fund, BTL assets and mortgage liabilities, and discounted Stakeholder pension alternative.

There are two Critical Yield Test ('CYT') documents related to the February 2019 advice, one using the Lifetime SIPP as a comparator and the other using the MPS as a comparator. The SIPP related CYT calculation resulted in a 'pass' outcome. The MPS related CYT calculation resulted in a 'fail' outcome, with a repeated reference to the fact that the annual outperformance needed in the RA up to maturity, in comparison with the MPS, was 1.52%. This CYT document also includes a warning notice (in red) confirming that any initial advice fee sacrifice required to gain a pass was "too high" so the failed outcome was to remain, and that the "transfer cannot proceed".

The regulator's Principles for Businesses, at Principle 6, required the partner to pay due regard to Miss C's interests and treat her fairly. The same responsibility was echoed 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. Miss C was such a client of the partner's, so she was owed an advisory service from the partner in which, overall, the advice had to be in her best interests.

Furthermore, and with relevance to the need to uphold Miss C's best interests, the regulator's 2016 guidance on 'assessing suitability' confirmed an expectation upon firms to objectively consider their clients' needs and objectives.

Therefore, overall, the partner should have provided suitable advice to Miss C, in her best interests, and he should have done so with an objective approach towards her 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. One of the four considerations was 'charges' and the question to address was – is the consumer being switched to a pension that is more expensive than the existing one(s) or a stakeholder pension without good reason?

In 2012 further guidance from the regulator, on the same matter, 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."

The partner's SRs were sufficiently clear to Miss C about the additional costs of the

recommended RA, the impact of that in terms of outperformances required, and the comparison to which the outperformance forecasts related (that is, comparison with the MPS). Therefore, I do not consider that he did anything wrong in relation to the concerns the regulator addressed in paragraph 2.11 above.

However, the impact of the additional costs had to be meaningfully addressed, and the partner does not appear to have done this. His advice did not present a defined or tangible strategy, over the life of the recommended RA (roughly around 10 years until Miss C's likely retirement age at the time), on how the required outperformance was likely/more likely to be achieved. The illustrations for his initial advice did not amount to such a strategy, and the need for a meaningful strategy in this respect is relevant to the concern the regulator addressed in paragraph 2.12 above.

The partner noted that capital preservation and a reduction in costs were part of Miss C's objectives. He appears to have treated the latter in the context of the SIPP's charges, but I consider that she wanted, or would have wanted, a reduction in costs in simple and general terms, not merely any reduction lower than the SIPP's costs, especially given that her MPS already set a form of benchmark for how low her costs could be.

In other words, it is unlikely that the additional costs in the partner's recommendation would have aided the achievement of the aforementioned objectives. Furthermore, the idea of incurring additional costs that were not justified, and that would potentially erode the capital she sought to preserve (and hopefully grow), could not have been in her best interest.

I am mindful of the history (between the partner and Miss C) closely prior to the RA recommendations that might have influenced the partner in taking the view that the additional costs were worth the benefit of the OAS he was to provide.

There is evidence of correspondence in which he refers to having assisted Miss C during the preceding year in addressing problems she had with the SIPP and with regards to her FSCS claim. It is possible that any assistance he previously gave in these respects might have prompted or contributed to consideration of the value of his OAS at the time of the RA recommendations.

Nevertheless, the context I set out above – about the obligations and standards the partner was required to uphold – still applies, so his advice to Miss C still had to be approached objectively, it still had to be suitable and it still had to be in her best interest, including the need for credible justification for any increase in costs associated with the advice.

Furthermore, service for the purpose of advising on or assisting the pursuit of a complaint about an unsuitable SIPP and/or the pursuit of an FSCS claim (for the same or similar reason) is quite specific. Such advice/assistance arose from the relevant complaint/claim circumstances. That is not the same, similar or comparable to the idea of annual reviews of a pension in an OAS, so it did not automatically follow that one should lead into the other.

No matter how useful the partner was in assisting Miss C with the SIPP, that did not automatically mean she thereafter needed his OAS for a single £10,000 contribution or for the transferred SIPP, and it did not automatically mean it was suitable and in her best interest for those purposes. It is also noteworthy that her Aviva GPPs appear to have been left as they were, outside the partner's remit, so it does not seem to be the case that she wanted or needed an OAS for her overall pension arrangements. Which begs the question – if, as it appears, she did not need the partner's OAS for those two GPPs (which, together and at the time, were more valuable than the £10,000 contribution and the SIPP's transfer value combined), why would it have been needed at all? On balance, I have not seen evidence to persuade me that it was needed.

The additional costs were substantial. The first recommendation (based on the single £10,000 contribution) meant an increase in annual fees of 1.48%, then the second recommendation (based on the transferred SIPP) meant an increase in annual fees of 1.52% – with both increases also essentially representing the outperformance required in the RA to nullify the higher cost. The increase was in comparison to the NEST MPS, which the partner confirmed was available and could have been used for both the single contribution and the transferred SIPP. The increase was five times the 0.30% annual fees charged by the MPS, or if the MPS' initial charge was averaged over around 10 years and included, then the increase was around three times that total annual cost. Either way, the additional costs were substantial.

The illustrations for both recommendations showed that the total of advice and product costs were bound to adversely affect growth in the RA by 2.1% per year. In other words, the recommended RA had to outperform the MPS by 1.52% per year and over its life it needed to overcome the 2.1% per year fees related adverse impact on growth. Despite these hurdles, and as I noted above, the advice provided no meaningful plan or strategy on how outperformance was likely to be achieved.

Even the CYT, overall, that was applied by the partner informed him that the transfer of the SIPP to the RA should not proceed. On balance, I agree that the SIPP had to be moved away from Lifetime, given the state in which the SIPP and its provider were at the time, so I do not find any evidence value in the CYT using the Lifetime SIPP as comparator. However, the CYT using the NEST MPS as comparator certainly has relevance and evidence value. The MPS already existed and it could have been the destination for the SIPP, and the CYT conducted in this respect produced a failed outcome – a CYT in which a reduction of advice fees could not even help to achieve a pass outcome.

Overall and on balance, I consider that every important indicator at the time informed the partner that the RA was unsuitable – as it was – for both the single contribution and for the SIPP transfer.

He justified recommendation of the RA solely – or at least mainly – on the value that he placed upon the OAS he was to deliver. Even if an OAS was something she wanted to consider – and, in this respect, I have not seen evidence to show it was something she was insistent about – I am not convinced, on balance, that it was needed (or in her best interests at the time).

It is important to view the likely overall costs, in general (OAC/outperformance required/adverse effects on growth), associated with the recommended OAS against the relatively modest amounts of the contribution and the SIPP's transfer value.

This view should have been considered objectively by the partner, in terms of what was or was not in her best interests. Undertaking responsibility for an OAC in relation to a relatively modest total pension fund value of around £12,300 (the sum of the single contribution and the SIPP's transfer value) and then facing the aforementioned general costs, does not convey a proposition that was in Miss C's best interests. Nothing appears to have been presented, within the recommended OAS, as a tangible source of added value that would translate to compensating for the general costs.

I am aware, as I address in the next section, that Miss C appears to have made good use of the OAS between 2019 and 2023. However, it was a service she was paying for, so she was entitled to make good use of it. That does not automatically mean it was a justified and suitable recommendation at the outset.

Overall, on balance, and for all the above reasons, I do not find that the partner's advice to Miss C in January and February 2019 was suitable; any single contribution she wished to make could and should have been made into the MPS; and the same applies to the transfer of the Lifetime SIPP, that too could and should have been directed into the MPS.

Based on this provisional conclusion, it follows that the specific allegations made by Miss C about, and related to, the RA's underperformance – as summarised at the outset of this PD – do not need to be addressed. None of those issues would have arisen if the RA did not exist, and it is my provisional conclusion that the recommended RA solution was unsuitable for her, so her RA should not have been established.

The Partner's OAS

His January and February 2019 SRs both confirmed the OAS to be delivered to Miss C, mainly in the form of annual reviews.

I refer to the summary, in the background section above, of the annual reviews highlighted in SJP's evidence. In addition (and, in some cases, duplication), I note that meetings/discussions between the parties were held on 16 and 17 October 2019, 27 January 2020, 2 December 2020 (confirmed in an advice letter dated 4 December 2020), and 11 January 2023 (confirmed in an advice letter dated 17 January 2023); that pension illustrations were prepared for Miss C's RA on 28 January 2019, 13 February 2019, 29 January 2020, 3 December 2020 and 16 January 2023; and that a number of fact find documents were produced and updated for her over these years.

The meetings/discussions (and the advice letters that followed) included the following –

- *The partner's letter to Miss C and her partner (jointly) on 16 October 2019 refers to a review meeting held for them on the same date. It presents a summary of their discussions on the RA's portfolio's performance and rebalancing/fund switches conducted.*
- *The partner's 29 January 2020 letter to Miss C refers to discussions held on 17 October 2019 and 27 January 2020. It included recommendation of a £10,000 single contribution into the RA.*
- *The December 2020 post-meeting/discussion letter included recommendation of another single contribution into the RA (in the amount of £2,500) and commencement of regular monthly contributions of £835.*
- *The January 2023 post-meeting/discussion letter included recommendation of an increase (by £115) of the monthly contributions into the RA.*

On 23 January 2024 SJP wrote to Miss C to confirm that the value (around £53,000) in her RA had been transferred to Vanguard.

Overall, on balance, and with due regard given to evidence of the ongoing contacts – including the reviews, the different updated fact-finding exercises, the updated illustrations and the advice over the years (between 2019 and 2023) – between the partner and Miss C, I am not persuaded that the partner/SJP did anything wrong in terms of delivery of the OAS to her.

I acknowledge that many or most of the meetings/discussions included new advice, but there is evidence related to those meetings (such as the updated fact-finds and some of the contents of the follow-up advice letters) showing that reviews of her RA, distinct from new advice for the RA, were conducted within the same overall meetings/discussions.

For the above reasons, I do not consider that there are grounds to award Miss C, separately, a refund of the OAC she paid. She received the service she paid for, so a refund would be unfair. She might argue that the OAS (and associated OAC and AMC that she objects to) would not have existed but for the partner's unsuitable advice, so it should be refunded on this ground. However, redress for the partner's unsuitable advice is a separate matter, and I have set out below the provisions for redress that I am likely to make in my final decision, if I retain the associated findings on merit. With regards to the OAS and OAC, in isolation, I am satisfied that she received the service she paid for.

The Breakdown of Charges Request

On 31 October 2023 Miss C's partner wrote to the SJP partner and asked for a breakdown of charges for both his and Miss C's pensions in monetary terms. On the same day, the SJP partner replied and agreed to meet this request, and on 1 November 2023 he wrote again to say the request had been actioned and that the information "… should take 10 working days".

On 27 November 2023 the SJP partner provided the breakdown for Miss C's partner's RA. On 28 November 2023 Miss C's partner asked, on her behalf, for the same type of breakdown for her RA. On the same date, the SJP partner acknowledged this request and said – "Yes, we'll have to raise a new request which could be the same timeframes unfortunately".

Miss C did not receive the breakdown until we shared with her a copy of the charges breakdown sent to us by SJP in August 2024.

Overall and on balance, I consider that this was a live issue for Miss C throughout. She included it in her early correspondence with us, in which she clarified her complaint issues. I accept that it does not appear to have been included, explicitly, in her complaint to SJP. However, I consider it to be a matter implicitly within her wider complaints about alleged performance non-disclosures from the partner and about her objection to the fees she has paid. Given our service's inquisitorial remit, I do not find it unreasonable for us to address it.

The initial October 2023 request to the SJP partner clearly referred to a request for charges breakdowns related to 'both' relevant RAs (the RA belonging to Miss C's partner and the RA belonging to her). It is not clear why the SJP partner provided only the breakdown for her partner's RA on 27 November 2023. Nevertheless, he was reminded, on the following date, that a breakdown for her RA was also required, and he acknowledged that (on the same date). Yet, SJP did not produce the breakdown, and she did not receive it, until around nine months later (in August 2024).

Overall and on balance, I am satisfied that SJP's delay in providing this information to her was unreasonable. The partner knew the information was required and he appears to have neglected to follow-up on delivering it to her throughout most or all of the nine months delay.

Our service's guidance on how we approach awards for trouble, distress and inconvenience can be found on our website, at the following link – https://www.financial-ombudsman.org.uk/businesses/resolving-complaint/understanding-compensation/compensation-for-distress-or-inconvenience.

Under this guidance, awards between £300 and £750 can be considered where a firm's wrongdoing or mistake has caused considerable distress, upset and worry, and where it has caused disruption and inconvenience lasting over many weeks or months.

I acknowledge the investigator's award of £250 for this matter. However, I am minded to increase that to £400, because I consider the impact upon Miss C of the delayed breakdown fits into the £300 to £750 range of award. She quite clearly has a strongly held objection towards the fees she was paying, so the impact upon her of not having the requested breakdown over the course of the nine months delay would have been considerable.

I provisionally find that an award of £400 broadly compensates her for such impact. I have reached this figure mindful that the impact appears to have been somewhat mitigated by her partner taking the lead in making the requests – so she was assisted in that respect – and that, whilst she did not have a breakdown for her RA for around nine months, some of the information she sought about charges might have been drawn from the breakdown provided for her partner's RA."

The PD also shared a draft of the compensation and redress orders I intended to use in my final decision, if I retained the PD's findings.

Miss C broadly agrees with the outcomes in the PD, but she has also made some submissions.

She agrees with the draft compensation and redress orders that I shared, and has asked for inclusion of a clear and enforceable timescale for settlement in the final decision, to help her avoid undue settlement delays from SJP. Based on her calculations, she says redress should be –

"*Notional Value (Benchmark Performance): £61,216.12*

- *Actual Value (SJP RA): £53,145.41*
- *Compensation Before Interest: £8,070.71*
- *Interest (8% Simple from January 2024 to Settlement): £592.18*
- *Tax-Adjusted Compensation: £6,930.31*"

She said I should reconsider the OAS matter. She acknowledges that she used the OAS, but she strongly retains the view that the associated OAC payments – or charges totalling £7,247 over five years – should be fully refunded to her. Miss C feels that these charges have had an adverse effect on her pension fund and that parts of the PD support a full refund – the findings that the partner's advice was unsuitable and that the additional costs were unjustified. She also considered that "… *without suitable redress against SJP, there seems to be no incentive for them to change their practices and avoid providing unsuitable advice in the future*".

SJP strongly disagrees with the PD. It sent us detailed submissions restating its position(s) on the complaint, and asserting that the complaint should not be upheld.

In the main, the submissions recap on what SJP considers to be the facts relevant to the complaint; set out the context in which it believes the complaint should be approached (including what it considers to be the importance, benefits and value of its OAS and its investment management approach, and the due weight these factors are entitled to); refer to the regulatory framework it considers relevant to the complaint (in this respect it says an important point to note is that suitability does not turn on the issue of an investment's financial returns); summarise the history of Miss C's complaint (and its response to the complaint); and set out the grounds on which it considers the PD to be wrong or flawed.

In response to the PD's conclusions, SJP mainly says –

- I was wrong to find that the SIPP could have been transferred into the MPS.

It says "*The SJP Partner, a restricted adviser, could only advise on products in SJP's range of products … and the NEST MPS would not have been part of the list provided to SJP Partners, at the time. As such, the SJP Partner could not have been expected to advise* [Miss C] *to transfer the SIPP funds to the NEST MPS, rather than to the SJP RA, as the SJP Partner would not have been authorised by SJP to do so. As such, unless it is being advocated that advisers should breach the agreed boundaries of their authorisations, it was not open to* [me, in the PD] *to reach this conclusion.*"

- I was wrong to find that there was a 'fail outcome' for the CYT related to the MPS.

  It says "*The SIPP-related CYC was key to determining the suitability of any recommendation to be made … and resulted in a "pass" outcome. However the second comparison in relation to the MPS was not determinative in relation to the recommendation being considered but was conducted for the purposes of providing relevant information to the client to assist with them making an informed decision. A "fail" outcome did not apply therefore to the transfer being considered, as there was no proposal actually to move the NEST MPS funds to the SJP RA.*"

- I misdirected myself in applying paragraph 2.12 of the regulator's 2012 replacement business guidance.

  It says "*Paragraph 2.12 of the 2012 Guidance does not apply to* [Miss C's] *SJP Transfers. This is because "improved performance prospects" were not the reason for the transfer recommendations. The suitability letters for both of the SJP Transfers are clear that* [Miss C] *wanted to benefit from retirement planning, invest for her retirement, access ongoing services and advice, preserve capital and consolidate her pensions. There is no basis to suggest that* [Miss C] *wanted to switch to SJP to benefit from improved performance prospects as a main/primary objective.*"

  "[The partner] *was therefore not required to "demonstrate why [he] expect[ed] improved performance to be more likely in the new investment", per paragraph 2.12, as that requirement only applies to transfers based on improved performance prospects objectives*."

  "[The partner] *also certainly was not required … to present a "strategy" on "how the required outperformance was likely/more likely to be achieved". The requirement for a "strategy" has no basis in the relevant regulatory rules or guidance, and is not even part of the guidance which would have applied, had the transfers been made on the basis of improved performance prospects (which they were not, so it did not).*"

  "*It is also incorrect to conclude that the additional costs were not justified.* [Miss C] *benefited from (a) ongoing advice and annual reviews with a single SJP Partner that she trusted and (b) the SJP RA benefitted from the SJP IMA, which provided a more active management … These benefits justified the additional costs compared to the NEST MPS scheme, which did not have any of these benefits.*"

SJP also made additional comments on the OAS delivered to Miss C.

It mainly said – I did not consider, in the PD, the "*significant important and objective benefits*" of access to the OAS; "*The lack of advice in* [Miss C's] *other pension plans explained the desire to move to an offering where she would have a single and trusted point of contact, for some of her pension pots*"; "[Miss C's] *two Aviva Group personal pensions (which did not benefit from advice) were not transferred to SJP, this does not automatically mean that* [she]

did not need advice … a transfer of the Aviva pensions did not meet [her] *objectives …*"; "*… the costs associated with the advice were justified … an average charge of 0.8% per annum for ongoing advice …*"; "*The 1.48% and 1.52% comparative outperformance against the NEST MPS additional cost is not just for ongoing advice, but it represents the total cost of the SJP's services, including in relation to SJP's IMA … and the ability to access ongoing advice and reviews meant that the Pension Transfer advice was, overall, suitable …*".

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 reviewed Miss C's case and given due consideration to the comments and arguments both parties submitted in response to the PD. Having done so, I have not been persuaded to depart from the PD's findings and conclusions, which I retain and incorporate into this decision. Given that they have already been quoted above, I do not consider it necessary to restate all those findings and conclusions in this section.

I address Miss C's comments first.

The expectation upon SJP, in terms of settling redress, is that it will do so without undue delay, following its receipt of confirmation that Miss C has accepted the final decision. Furthermore, the redress orders below include the calculation (and payment) of interest on the redress due to her from the end date to the date of settlement, so this perhaps creates a form of incentive for SJP not to unduly delay the date of settlement. I have noted the calculation Miss C has shared, and SJP can do the same, but the responsibility to calculate and pay redress, as ordered below, belongs to SJP.

For the reasons given in the PD, I am not persuaded to uphold Miss C's claim for a refund of the OAC payments. I understand her comments in this respect, but I do not consider that they defeat the reasons in the PD or that they create grounds to alter the PD's findings on the issue. I also understand the point she has made about SJP's future practices. I imagine that, like many or most firms in its position, SJP will reflect on a complaint that has been upheld and draw learnings from it. However, my remit is limited to determining the complaint. It does not extend to giving punitive-based incentives to shape SJP's future practices – which seems to be what Miss C is inviting me to do.

I now turn to SJP's comments, and I begin by repeating the same remit – which is to determine Miss C' complaint. I have noted its submissions on the reasoning behind, value and benefits of its OAS and investment management approach, but I am not conducting a general appraisal of its OAS and/or its investment management approach. I am addressing, on the balance of probabilities, the merits of Miss C's complaint, based on the facts and circumstances in her case and on the relevant regulatory/legal framework. Therefore, I am not persuaded to determine the case on generic assumptions in favour of either of these two aspects (OAS and investment management approach) of the partner's recommendation. Instead, I find it fair and reasonable to consider these aspects in the context of the facts and circumstances of Miss C's case.

In the PD, I said the following –

"*Furthermore, and with relevance to the need to uphold Miss C's best interests, the regulator's 2016 guidance on 'assessing suitability' confirmed an expectation upon firms to objectively consider their clients' needs and objectives.*

Therefore, overall, the partner should have provided suitable advice to Miss C, in her best

interests, and he should have done so with an objective approach towards her needs and goals."

This is relevant to SJP's argument about the partner being obliged to advise on SJP's range of products. Such an arrangement would have been a matter between the partner and SJP. However, as far as suitability for Miss C was concerned, the point to draw from the 2016 guidance in the quote above is that the partner was expected to consider Miss C's profile and, in essence, the matter of suitability *objectively*. I have not seen grounds on which to abandon and/or disregard this regulatory expectation in favour of SJP's argument. Indeed, as I address below, the partner appears to have conducted his assessments with considerations beyond SJP's range of products (so, it seems, beyond what SJP has argued).

The PD explained the history between Miss C and the partner, concerning her issues with the SIPP. It set out reasons why that history did not automatically mean she needed the recommended OAS or that it was suitable and in her best interest. A key fact in this respect, as noted in the PD and in SJP's comments, is that she did not seek an OAS for the Aviva GPPs she held outside the partner's recommendation. As I said in the PD –

"*It is also noteworthy that her Aviva GPPs appear to have been left as they were, outside the partner's remit, so it does not seem to be the case that she wanted or needed an OAS for her overall pension arrangements. Which begs the question – if, as it appears, she did not need the partner's OAS for those two GPPs (which, together and at the time, were more valuable than the £10,000 contribution and the SIPP's transfer value combined), why would it have been needed at all? On balance, I have not seen evidence to persuade me that it was needed.*" [my emphasis]

SJP says "… *a transfer of the Aviva pensions did not meet* [her] *objectives* …". It is not quite clear to me what this means, but the facts show that Miss C neither wanted nor needed, for her Aviva GPPs, what the partner offered (including the OAS). That is broadly what I found in the quote above. I consider this a good reason to conclude, on balance, that the partner's OAS was not a necessity for Miss C, otherwise it would probably have been applied to all her pensions, and that it was not valued by her in the way that SJP has argued. In other words, I can reasonably subject it to the suitability analysis I conducted in the PD – as opposed to excluding it from that analysis and/or giving it a form of preferential treatment, as SJP seems to suggest. In this regard, I retain the outcome expressed in the PD.

In the January 2019 SR, the partner dedicated a subsection to the MPS. He confirmed that the MPS could accept the recommended contribution. He set out the MPS' charges and concluded as follows – "*I have recommended you contribute to a St. James's Place Retirement Account rather than your employer's scheme because you have historically not taken advice on your pension contributions and consider the ability to access advice from myself to be very important to you. You would not receive this if you were to transfer the benefits to NEST*".

Later in the SR, under the heading "*Alternatives Available – Stakeholder Scheme*", the partner gave reason why he recommended the RA instead of a Stakeholder plan, and the reason related to adviser charges being applicable outside such a plan whereas, he said, the recommended RA solution came with SJP's investment management approach "*at essentially no additional costs*".

These comparisons between the RA and the MPS, and between the RA and a stakeholder plan happened in the January 2019 SR. The same thing happened in the February 2019 SR, with the same reasons given in each comparison. Furthermore, the February SR also compared the RA with the existing Lifetime SIPP and gave reasons for favouring the former.

The partner said – "*Having considered this option and the reasons for wanting to transfer, this was not recommended because you do not have the benefit of advice with your current provider …*", and "*Use of a Trustee Investment Account (TIA) within your existing self-invested arrangement was considered*", and "*… a TIA held within the existing arrangement was discounted because you wish to consolidate funds and close your account with The Lifetime SIPP Company …*".

As I addressed in the PD, the 2019 recommendations were also based on CYTs conducted in comparison with the Lifetime SIPP and with the MPS.

Overall and on balance, I consider that the above depicts the partner assessing suitability of the recommendations to Miss C on factors that went beyond and that were not defined or restricted by SJP's range of products. I accept that the implication arising from his comment about the MPS is that SJP's OAS could not be applied to the MPS option, but I have already dealt with the reason(s) why the prospect of the OAS was not a pivotal consideration in terms of suitability. At the point of initial advice and with specific regard to the suitability of his initial advice, the partner discounted the MPS, the Lifetime SIPP and a Stakeholder plan for specific reasons that he had considered, and those reasons were not all about him being restricted to give advice on SJP's range of products.

In this respect, I do not accept SJP's submission about the CYT related to the MPS. I appear to have been invited to conclude that it was meaningless in terms of the partner's advice, and that it did no more than provide information to Miss C. Given the comparisons in both SRs, and the contents of the CYTs, I am persuaded that the CYT related to the MPS was part of the partners assessment of suitability, so it is not evidence to be ignored. My findings on it are as I presented in the PD.

The PD says –

"*The partner noted that capital preservation and a reduction in costs were part of Miss C's objectives. He appears to have treated the latter in the context of the SIPP's charges, but I consider that she wanted, or would have wanted, a reduction in costs in simple and general terms, not merely any reduction lower than the SIPP's costs, especially given that her MPS already set a form of benchmark for how low her costs could be.*

In other words, it is unlikely that the additional costs in the partner's recommendation would have aided the achievement of the aforementioned objectives. Furthermore, the idea of incurring additional costs that were not justified, and that would potentially erode the capital she sought to preserve (and hopefully grow), could not have been in her best interest."

This was stated in relation to the regulator's 2012 replacement business guidance, and it stands as relevant context. It also stands as reason why paragraph 2.12 of the guidance is applicable to Miss C's case. Whichever way her case is approached, evidence on her capital preservation and cost reduction objectives is undisputed. This inevitably meant the matter of outperformance was crucial. It was required to address the increased costs and its adverse effect on growth within the partner's recommendation, and to reconcile these factors with the inherently conflicting objectives to 'reduce' costs and 'preserve' capital. Therefore, the prospect of performance inevitably and implicitly had to be an important part of what the partner was recommending.

SJP's objection to the use of the word 'strategy' is not quite clear. Paragraph 2.12 of the guidance says firms "… *should clearly demonstrate why they expect improved performance to be more likely in the new investment*". It is reasonable to say that this expectation can, and perhaps should, be met with demonstration of a strategy to achieve improved performance – thereby showing *why* such performance is more likely in the new investment.

Nothing meaningful in the form of what paragraph 2.12 asks for and in the form of a strategy for improved performance was presented to Miss C by the partner, so my findings on this remain as set out in the PD.

Putting things right

fair compensation

My aim is that Miss C should be put as closely as possible into the position she would probably now be in, but for the partner's unsuitable advice. As explained above, she should have used the MPS for her single pension contribution and SIPP transfer. For this reason, I have used the MPS' notional value as the primary redress calculation benchmark.

However, I cannot be certain that a notional value will be obtainable from NEST, the provider of the MPS. Overall, I am satisfied that what I set out below, including provision for an alternative benchmark (based on Miss C's profile at the time of advice) if the notional value of the MPS cannot be obtained, is fair and reasonable redress.

The start date for the calculation of redress is the date on which Miss C's RA was established. The end date for the calculation is the date on which the RA was transferred out to Vanguard.

what must SJP do?

To compensate Miss C fairly, SJP must:

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

- Pay the compensation into Miss C's 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 Miss C's pension plan, it should pay that amount direct to her. 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 Miss C would not be able to reclaim any of the reduction after compensation is paid.

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

- Pay Miss C £400 for the trouble and inconvenience caused to her in the charges breakdown request matter.

- Provide the details of the calculation to Miss C 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 Miss C how much has been taken off. It should give her a tax deduction certificate in respect of interest if she asks for one, so she can reclaim the tax on interest from HM Revenue & Customs if appropriate.

The Investment	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
The SJP Retriement Account	No longer exists	Notional value from previous provider; or alternative benchmark(s) stated below.	Date the SJP Retirement Account was established	Date the SJP Retirement Account was transferred to Vanguard	8% simple per year from the end date to the date of settlement

actual value

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

notional [fair] Value

As I said in the PD – "… *Miss C's risk profile appears to have changed from lower/medium to medium during the life of her RA … this will be relevant to the calculation of redress. I am provisionally satisfied with evidence from SJP that this change happened in November 2021. However, if Miss C disputes this, she should confirm so and confirm her position on the matter*". Miss C has not confirmed such dispute.

The notional value is the value of the investment based on the performance of a version of the NEST MPS that suitably matches Miss C's risk profile (that is, her lower/medium risk profile up to November 2021, and then her medium risk profile thereafter) – the primary benchmark. SJP should request that NEST calculate this value. If there are costs involved in doing so SJP must undertake those costs.

Any additional sums paid into the investment should be added to the notional value calculation from the points in time when they were actually paid in.

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 NEST is unable to provide a notional value SJP will need to determine a *fair* value instead, using this alternative benchmark (and applying the same adjustments stated above) –

- for her lower/medium risk profile up to November 2021 – for half the investment, FTSE UK Private Investors Income Total Return Index (prior to 1 March 2017, the FTSE WMA Stock Market Income Total Return Index); for the other half – the Bank of England average return from fixed rate bonds.
- and for her medium risk profile after November 2021 – the FTSE UK Private Investors Income Total Return Index (prior to 1 March 2017, the FTSE WMA Stock Market Income Total Return Index).

why is this remedy suitable?

- If NEST is unable to provide a notional value, then I consider that the measures below are 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 is a fair measure for someone who was prepared to take some risk to get a higher return.

- The average rate for fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to capital.

- I consider that Miss C's lower/medium risk profile was in between both benchmarks, in the sense that she was prepared to take a small level of risk to attain her objective. The 50/50 combination above would reasonably put her into that position and it should broadly reflect the sort of return she could have obtained from investments in the MPS based on the same profile.

- I consider that Miss C's medium risk profile can be reflected in the FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) benchmark, on its own, in the sense that she was prepared to take some risk to achieve higher growth on her pension capital. It does not mean that she would have invested in some kind of index tracker investment. Rather, I consider this a reasonable benchmark that should broadly reflect the sort of return she could have obtained from investments in the MPS based on the same 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 Miss C's case, the complaint event occurred before 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 £190,000.

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 must pay Miss C 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 Miss C 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 in the PD and above, I uphold Miss C's complaint (that is, the issues in her complaint that I have upheld). I order St. James's Place Wealth Management Plc to calculate and pay her compensation and redress as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 10 February 2025.

Roy Kuku
Ombudsman