The complaint

Mr R, with the help of a claims management company (CMC) has complained that St James's Place Wealth Management Plc ("SJP") gave him unsuitable advice to switch his pension held with a different provider to an SJP Retirements Account ("SJP RA") in 2013. He has also complained that SJP failed to deliver all of the annual reviews of the RA that he has paid for by way of an Ongoing Advice Charge (OAC).

What happened

Mr R held two pension plans and in late 2012 he met with an adviser from SJP to discuss his retirement planning. This particular adviser had recommended he transfer the pension which is the focus of this complaint some years earlier, in 2002, to a provider which I will refer to as Firm C. But as Mr R had become unhappy with Firm C he returned to his adviser to discuss potentially switching the pension from Firm C to SJP.

Mr R's circumstances at the time as recorded in the fact find completed by himself and the adviser and were as follows:

- He was 44 years old, married with two children, and in good health.
- He was a factory/production worker employed through an agency earning £12,000 per year after tax, with £560 disposable income each month and an emergency fund of £4,500, held jointly.
- He owned his home jointly with his wife, valued at £135,000, with an outstanding mortgage balance of £49,000.
- He had a Stakeholder Pension Plan with Firm C valued at just over £19,000 as of April 2013, and an Occupational Pension Scheme with a different provider – Firm F - valued at around £29,000 as of December 2012.

His objectives for retirement planning were noted as follows:

- He had no retirement income target and wasn't planning to contribute regularly to his pension at the time of the advice and that he wanted to provide for an adequate income when he retired at age 60.
- He wanted face to face contact with one adviser for ease of administration.
- He was attracted to the SJP approach to investment management, but his existing provider did not offer external and independent fund manager monitoring.
- Charges were not his main concern as he wasn't happy with Firm C as they were owned by a large banking group and it was rumoured that they intended to dispense with the Firm C brand at some point. And he was concerned that may require him to use a different adviser which he didn't want to do.

SJP carried out a suitability assessment and taking account of Mr R's personal and financial objectives along with his retirement objectives recommended to transfer his existing plan with Firm C to a new SJP RA. It was explained to him that the managed fund portfolio was consistent with the attitude to risk Mr R had expressed an interest in and while it had a higher equity content and less diversity in terms of asset classes it offered greater diversification of management styles than his previous plan. The report included a recommendation for Mr R to maximise his pension contributions each year once affordable.

The suitability report/recommendation letter set out the reason why Mr R had approached the adviser and why he wanted to switch his pension away from Firm C and affirmed his retirement objectives along with his financial circumstances. It explained SJP's approach to investing as well as the alternatives available to Mr R instead of switching away from Firm C.

The documents also recorded that the main reason Mr R had wanted a pension review was because he initially wanted to focus on his occupational pension scheme held with Firm F which had undergone some changes. However, SJP as part of the suitability process had discovered that the plan had protected tax free cash at the selected retirement date and so SJP recommended that Mr R didn't replace the occupational plan at this stage.

In terms of charges the document confirmed that there were no charges for transferring his plan to SJP but it also explained that there were some potential disadvantages if replacing his current plan – such as a higher management charge, an early withdrawal charge on fund encashments within six years of a contribution being invested, loss of loyalty units from Firm C and the loss of free fund switches with Firm C.

It also explained the impact of ongoing charges on Mr R's plan benefits. It explained that the new recommended plan would need to outperform the existing plan with Firm C by 0.9% per annum in the future to match the estimated benefits from his existing plan at his selected retirement date, which equated to the new plan having to grow by £171.99 more in the first years than his existing plan with Firm C. It was also recorded the Mr R felt there was a reasonable opportunity for growth to be achieved and that he was willing to accept the risk if it wasn't.

The document also explained that the adviser strongly recommended that a review of Mr R's circumstances should be conducted at regular intervals and that he would write to him each year on the anniversary of the plan to provide him with an annual statement in respect of the funds and to arrange a review.

In terms of Mr R's attitude to risk it appears that Mr R's understanding of risk and rewards was examined and Mr R agreed that he could be described as having some previous experience of investing in equities through his other pension plans. It was recorded that he wanted to have more input into fund choices on an annual basis and that he wanted regular reviews on his pension. He also confirmed that he intended to use his funds for retirement benefits at age 60, thereby confirming the term over which he wanted to invest.

Having looked at Mr R's financial position it was decided that Mr R was a medium risk investor on SJP's risk spectrum meaning Mr R wanted his capital to keep pace with inflation and was comfortable with his capital being invested in equities and property with some overseas investments. It was recorded that Mr R realised there was a risk that there could be significant falls in the value of the investment and that accepting this risk gave him the potential to achieve better long-term returns.

Mr R also confirmed that a fall in the value of his investments in the short term would not have a significant impact on his standard of living because he wanted to invest over a relatively long period and understood this would give him more time to build up a potentially larger pension fund at retirement.

Mr R was provided with a Key Facts document which amongst other things confirmed the type of advice (restricted) Mr R was receiving, the cost of the advice and services and stated that SJP would provide ongoing advice to review the investments and ongoing contribution levels along with how he would be charged and how these charges would be paid. It also detailed how charges on the investment would reduce the growth of the retirement plan and affect the value of the funds.

In January 2020 Mr R was sent a letter by SJP informing him that his adviser had changed and offered Mr R a face-to-face review of his investment.
It would appear this wasn't taken up by Mr R because in an email from SJP to Mr R in August 2021 it was mentioned that a financial review was "long overdue" and while Mr R didn't feel it was necessary if he changed his mind, he was to contact his adviser.
Again, it seems a review didn't take place at this time with the next review which did take place happening in August 2022.

Mr R appears to have transferred his pension away from SJP in March 2023. No further information has been provided about this.

On 5 June 2024 Mr R, through his CMC, complained to SJP setting out the following complaint points:

- He hadn't received the annual ongoing advice reviews even though he had been charged for them.
- There is no evidence of how SJP established Mr R's investment risk profile or his capacity for loss.
- He held an existing pension which he should have been advised to maximise and potentially increase before starting any new plans.
- The higher charges including the initial advice ongoing advice charges and the fees of the new product were not given appropriate consideration when assessing the suitability of the recommendations.
- The charges were not adequately explained to Mr R.
- The CMC also stated that Mr R had been financially disadvantaged by the retirement plan recommendations and had it not been for the advice Mr R would have retained and increased contributions to his existing pension arrangement.

In response to the complaint SJP objected to this Service considering part of the complaint under the Dispute Resolution (DISP) Rules set out in the Financial Conduct Authority (FCA) handbook (set out in more detail below). It stated that the complaint about some of the missed reviews and their related charges had been brought more than six years after the event – the reviews that were missed in 2014, 2015, 2016 and 2017- so therefore couldn't be considered by this Service. SJP also said that it had been more than three years since Mr R ought reasonably have known he had cause to complain about the missed reviews because the suitability letter and key facts documents he was provided with at the time of the pension switch made it clear that he should expect a review and he signed the documents acknowledging and accepting the terms. So it reasoned that the complaint related to these specific dates had been brought too late – in other words no missed reviews prior to 5 June 2018 could be considered.

However, SJP agreed that any reviews missed from 2019 onwards were in scope of this complaint and could be considered. And in looking into these SJP accepted that the reviews from 2019, 2020, 2021 and 2023 had been missed, therefore offered a refund of the charges for these plus interest plus a sum of £150 for the distress and inconvenience Mr R had suffered – in total £499.03.

In relation to the part of the complaint about the suitability of the advice Mr R was given in 2013 SJP didn't uphold the complaint as it was satisfied the advice was suitable for Mr R given his needs and objectives at the time.

As Mr R's CMC rejected the findings of SJP it referred the complaint to this Service where it was assessed by one of our investigators. He agreed that an element of the complaint around the missed reviews was correctly time barred by SJP stating that Mr R would have known that he should have been getting annual reviews from the start of the plan and this was clearly set out numerous times in the documentation Mr R had been provided with and had signed in agreement, at the time of the sale. He was however of the view that the missed reviews from 2019 onwards could be investigated and was satisfied that these had been missed and so should be refunded. Having looked at how SJP had offered to redress this part of the complaint the investigator agreed with the methodology proposed by SJP and so felt that SJP didn't need to do any more in relation to this point. In terms of the suitability aspect the investigator again agreed with SJP that the advice provided in 2013 was not unsuitable for Mr R.

The CMC didn't agree with the assessment. It strongly rejected the time bar findings stating that its unreasonable to expect Mr R to have remembered a comment in a pack of paperwork from the time of the sale many years later. It also stated that Mr R had no reason to know about that a missed review was grounds to raise a complaint. And that as SJP didn't fulfil its responsibilities in respect of *all* the annual reviews a refund of all the reviews should be awarded.

Regarding the suitability aspect of the complaint the CMC felt that SJP had failed to understand Mr R's circumstances and requirements at the time of providing the advice. It also felt that Mr R was significantly worse off by switching his pension to SJP and that he had incurred charges for a product which may have not been the most appropriate option for him by the time he was ready to retire and that the switch wouldn't have been needed if he had gone on to purchase an annuity on the open market.

The CMC also said that Mr R had switched to a more expensive product and lost benefits without reason due to the poor quality of the advice. And the extra costs were not explained or justified. It also stated that in order to exceed the drag of the increased costs and then provide an improved return on the investment there needed to be a reasonable prospect of improvement in the new arrangements which there wasn't.

While the investigator considered the comments made by the CMC he wasn't persuaded to change his initial outcome. So as no agreement could be reached the complaint has been passed to me to decide.

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've taken into account relevant: law and regulations; regulatory rules; guidance and standards; codes of practice; and (where appropriate) what I consider to have been good industry practice at the relevant time.

Where the evidence is incomplete or inconclusive, I've reached my decision based on the balance of probabilities – in other words, on what I think is more likely than not to have happened given the available evidence and wider circumstances.

<u>Time bar objection in relation to the OAC</u>

The Financial Ombudsman Service isn't free to consider every complaint that's brought to us. We are governed by rules set by the FCA and these are the DISP Rules, as mentioned above. They set out the complaints that we can (and can't) consider and I have to strictly apply these rules.

Without the consent of the business involved, we can't consider a complaint that is brought to us outside set time limits.

The specific DISP rule relevant for this complaint is DISP 2.8.2 R which sets out the following:

"The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service:

……..
(*2) More than:*
(a) Six years after the event complained of; or (if later)
(b) Three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint;

Unless the complainant referred the complaint to the respondent or to the Ombudsman within that period and had written acknowledgement or some other record of the complaint being received;

Unless:

(3) in the view of the ombudsman, the failure to comply with the time limits in DISP 2.8.2 R or DISP 2.8.7 R was as a result of exceptional circumstances; …….

In this complaint the "event" being complained of is each missed review. So given Mr R raised his complaint on 5 June 2024 any missed reviews that should have taken place more than six years before this date cannot be looked at, as per the rules above. So these are any missed reviews which came before 5 June 2018.

Therefore, what I must next consider is whether Mr R knew, or ought reasonably should have known that he had cause for complaint more than three years before he raised his complaint.

Having reviewed the documentation that was provided to Mr R at the time of the switch I am satisfied that it was made clear to him several times in several different documents that his plan would be reviewed regularly to ensure the investment remained appropriate and suitable for him. And in one document its was stated Mr R would be contacted each year on the anniversary of his plan to set up the review of the plan. I can also see that Mr R signed this document confirming he had read and understood it. It therefore seems clear to me that the fact his plan would be reviewed regularly and annually should have been something Mr R was aware of from the outset of the switch – therefore more than three years before he raised his complaint in June 2024. So it follows that from the point the first review was missed he was in a position to raise a complaint about the missed review.

I know the CMC feels that it is unreasonable for Mr R to have remembered comments in a pack of point-of-sale documentation, however I disagree. The information Mr R was provided with at the time of the switch was well detailed and comprehensive and from what I have seen set out the details about the regular reviews in a clear manner. It was Mr R's responsibility to read and absorb this information and retain it – especially given it was related to something as important as his pension which he was clearly interested in.

So I think as it was made clear to Mr R at the inception of the plan that he would be having regular/annual reviews he ought to have known he could complain about the lack of reviews at the point the first review was missed.

It's important to note that in order to have awareness Mr R need not know the exact nature of the complaint that he is bringing to this Service now. It is enough that he knew or ought to have known that something had gone wrong and that this could result in him suffering some loss. Also, Mr R need not be aware that he *could* make a complaint against SJP; for this consideration the point I must consider is whether he *ought reasonably* to have known he had cause to complain about SJP. And in order to have the requisite awareness, it is not necessary that Mr R understood the ins and outs of the exact complaint points being currently brought. All that is required is that Mr R ought reasonably to have been aware that something had gone wrong (i.e. the missed review) and that this could lead to a loss or some sort of financial detriment for him and that this was attributable to failings by SJP. He need not know with any precision what it was that SJP had failed to do – it would be enough that he understood the 'essence' of the failings that may have occurred.

I therefore find that any reviews that were missed in the years prior to 5 June 2018 have been brought to this Service too late and therefore a complaint about these cannot be considered by this Service.

<u>Missed reviews from 2019 onwards</u>

As detailed above SJP did accept that reviews of Mr R's investment plan didn't take place when they should have in the years 2019, 2020 ,2021 and 2023 (we know the review in 2022 took place) and that it agreed to refund the charges for these missed reviews along with interest. I am satisfied with the manner in which SJP has offered to redress this failure along with its offer of a payment for the distress and inconvenience Mr R has suffered. So I therefore don't think SJP need do anything further in regard to this point.

<u>Suitability of the advice to switch to SJP</u>

Turning now to the suitability of the advice Mr R received in 2013 to switch his pension to SJP; first its important to point out that my role is not to decide what the *best* or most perfect advice would have been for Mr R, or any consumer. My role is to look at the advice and the recommendations given and decide whether, from the information in front of me, what was recommended was in line with the consumer's needs and objectives at the time taking account of his personal and financial circumstances.

So where the CMC has said that there were many other options available to Mr R at the time of the advice rather than switching his pension, whilst that may be true, I can only look at the advice Mr R accepted and assess the suitability of that – I cannot state or decide what else Mr R should or could have done.

As a regulated firm, SJP had many rules and principles that it needed to adhere to when providing advice to Mr R, namely the FCA handbook under the Conduct of Business Sourcebook (COBS) and Principles for Businesses (PRIN), as they were at the time of the advice.

Furthermore, given the complaint concerns a switch of a pension I must also have in mind the relevant guidance provided by the FCA and its predecessor, the Financial Service Authority ("FCA") and of particular relevance for this complaint is the report the FSA published in 2008 on the quality of advice on pension switching. This report identified four main areas where they considered advice to be unsuitable:

- The switch involved extra product costs without good reason.
- The fund(s) recommended were not suitable for the customer's attitude to risk and personal circumstances.
- The adviser failed to explain the need for or put in place ongoing reviews when these are necessary.
- The switch involved loss of benefits from the ceding scheme without good reason.

As well as this, in deciding whether the advice was suitable I have considered what obligations SJP had when providing that advice and in conducting its suitability exercise. In doing this I expect to see that a business has obtained necessary information regarding the consumers' knowledge and experience in investing, their financial situation and any investment objectives – essentially enough information to understand the most important facts of the consumer so that the recommendation meets the consumer's investment objectives. These considerations include their attitude to risk, the purpose of investing and how long they want to invest for; whether the consumer can financially withstand the investment risk; any potential future changes to their circumstances (financial and personal); the extent of their regular income, assets, cash holdings, investments, property liabilities and regular financial commitments.

The advice Mr R received was to switch his pension held with Firm C to SJP. There is nothing in the information to suggest that the pension with Firm C was no longer suitable for him so clearly the advice warrants a closer look. However, as already set out earlier in this decision the point of sale documentation recorded that Mr R had definite reasons for wanting to switch from his then existing pension provider so I am satisfied that Mr R had a clear rationale for transferring from his existing provider at the time and that it seems it was he who had initiated the process.

Its worth noting here that while initially Mr R wanted to transfer both of the pensions he held at the time, the occupational pension that he held with Firm F didn't go ahead because SJP had found that if he did transfer that one he would have lost his guaranteed tax-free cash and so advised against it. I think this points to the adviser not advising to switch just for his own benefit. He appears to have looked into what options were best for Mr R regarding both of his pensions at the time.

Turning now to costs of the transfer and the ongoing costs of the new plan, I can see that the new plan was more expensive. The suitability/recommendation letter sets out quite clearly that the SJP RA had a higher management charge, an early withdrawal charge within six years of a contribution being invested plus ongoing adviser charges for the regular reviews. However, given Mr R's specific reasons for transferring and that Mr R had been made fully aware of these facts I don't think this element makes the advice unsuitable. I think he had been made fully aware of this and decided to continue with the switch anyway, which indicates to me that he was willing to accept the higher charges, being fully cognisant of them in order to get the type of investment and adviser service that he required.

I can appreciate that the loss of benefits from his existing provider could be viewed as a concern along with the fact the new plan would need to outperform the existing plan by 0.9% to match the estimated benefits of his existing plan. However, again I am satisfied that Mr R was aware of these details and understood them and in light of his reasons for leaving Firm C it isn't unreasonable that he felt the disadvantages of the switch were outweighed by his requirements.

In terms of the risk that the new plan presented Mr R with, I can see that his previous plan was in a portfolio with a lower level of risk exposure than the recommended one. That one had approximately 50% allocation into equities and the recommended one had around 83%

in equities and 17% in fixed income and other assets such as property. However, having said that I am satisfied that the new recommended portfolio was still around the medium level of the risk spectrum, all be it on the higher end. But again, I don't think this automatically make the advice unsuitable. Mr R was in his forties at the time and wasn't planning to retire until the age of 60. So he was investing for the long term. He was employed receiving a regular income and held a good amount of cash in easily disposable funds, on a joint basis. He seems to have thought about his pension options as it was recorded that he didn't need an income from his pension – he just wanted away from his existing provider and wanted to start making contributions at some point. So in light of this, the fact that he was transferring a lump sum that he had already built up and at that stage the plan was for him to continue to work for another fifteen years or so I think the SJP adviser wasn't wrong to assess him as a medium risked investor and place him in the recommended funds.

In terms of the documents provided and completed with Mr R (which he signed and accepted on 11 May 2013) I am satisfied that the level of details contained in these are sufficient to have provided Mr R with the information he required to make a fully informed decision. I can see the recommendation letter:

- Recorded Mr R's objectives and requirements along with his personal and financial circumstances at the time of the sale.
- Set out the alternatives that were available to him instead of transferring his pension from his existing provider at the time.
- Set out the reason why only one of his pension was being considered for the switch and why Mr R wanted SJP as his new pension provider.
- Set out the charges that would impact the plan and what Mr R would have to pay for over the term of the plan.
- Covered the disadvantages of replacing the plan.
- Explained why the adviser had set Mr R's attitude to risk as he did and set out confirmation that Mr R was willing and able to accept a fall in value of his plan over the short term and that wouldn't affect his standard of living because he was intent on investing over a longer term.
- Recorded that he wanted a managed fund portfolio because he wanted professional investment management and a broad spectrum of assets and he understood this portfolio would exhibit slightly higher volatility due to the higher equity content.

So overall it seems to me that the adviser undertook a full and detailed suitability review of Mr R taking account of his requirements and his objectives for investing. I think it can be seen that Mr R had specific reasons for switching his pension away from Firm C thereby justifying it. And given Mr R's age and the fact he was aware he was investing for his retirement and over a long term I am satisfied that despite the recommended portfolio exhibiting a higher level of risk than the existing investment the advice overall seems to largely be suitable for Mr R at the time of the sale.

Furthermore, I am satisfied that these issues were communicated to him in a good amount of detail by the adviser at the time. So I think its more likely than not that he was fully aware of these details and understood them and so knew what he was getting into by transferring the pension.

My final decision

For the reasons set out above my final decision is that I don't uphold the complaint and I make no award.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr R to accept or reject my decision before 12 June 2025.

Ayshea Khan
Ombudsman