DRN-5524170

The complaint

Mrs J complains that advice given by Michael John Rice, trading as MJR Financial Services (MJR), to transfer her existing pension was unsuitable and has caused her financial loss.

What happened

I issued a provisional decision on 17 April 2025. I set out what had happened and my provisional findings which I've repeated here.

'*I'm not going to refer to everything, just what I see as the key events and documents. Mrs J's husband has made a similar complaint which we've dealt with under separate reference. But there's considerable overlap between the complaints so my decisions on each are correspondingly similar.*

Mr and Mrs J both had personal pension plans with a provider I'll call Provider A. They'd been set up in 1995 through MJR. Mr J also had a personal pension plan with another provider, who I'll call Provider P, which had been set up in 1989. All three of Mr and Mrs J's pension plans were invested in with-profits funds.

In 2021 Mr and Mrs J went back to MJR for advice. A meeting was arranged for 10 August 2021. At the meeting a fact find was completed. Amongst other things it recorded that Mr J was then aged 62 and working three days a week with an income of £9,000 pa. Mrs J was 61 and had stopped working in November 2019. She was in receipt of a pension from a former employer. Mr and Mrs J had £2,000 in a current account, £89,000 in savings and £11,000 in an ISA (Individual Savings Account). They had a small outstanding mortgage and a small personal loan. Mr J's income would be reducing by £300 pm as he'd be cutting down working to two days a week. Mr and Mrs J wanted to stop contributing to their pension plans as they felt the values were adequate to meet their retirement needs and they wanted to start drawing money from them to supplement their income and meet some other financial needs. They wanted to consider crystallising at least some of their personal pensions although the adviser had recommended they use some of their cash savings instead.

Mr and Mrs J's attitudes to risk (ATR) were also assessed at the meeting. Beforehand they'd been sent ATR questionnaires and state pension forecast requests to complete. Mr and Mrs J say new questionnaires were completed at the meeting because on the ones they'd filled in they'd selected more than one response to some of the questions. MJR categorised both Mr and Mrs J as cautious investors – risk level 3 – that's on a scale of 1 (lowest risk) to 10 (highest risk). Mr and Mrs J appear to have signed, on 10 August 2021, documents confirming they agreed with that and which set out the following definition of cautious:

'As a cautious investor you tend to see yourself as quite a cautious person and are inclined to view risk negatively rather than as a source of opportunity. If you have limited experience of investing and do not find financial matters easy to understand then you may be suited to a Cautious approach to investing. You may also be suited to this approach if you take a fairly long time to make investment decisions and tend to be somewhat anxious about those decisions. As a Cautious investor you are likely to look for safer investments, although you may consider taking some limited risk in exchange for increased potential returns.'

MJR issued a joint suitability report on 26 November 2021. It said, following a risk profiling exercise, an ATR of risk level 3 – cautious had been established for both of them. They'd been given a definition of that which they'd signed in agreement. They should contact the adviser if they felt that risk profile didn't reflect their ATR. About their objectives, the report said Mr J's income would be reducing when he went down to working two days a week and he and his wife were looking for funds to repay their existing loan and to help finance Mrs J's brother's return to the UK from Australia. They were considering crystallising at least some of their pension plans. The adviser hadn't recommended they do that as they could use some of their substantial cash savings but they'd preferred to use their pension plans instead. They had no plans to take any income and wanted to keep Mr J's pension fund with Provider P uncrystallised – Mr J wouldn't be taking his PCLS from that fund.

A summary of Mr and Mrs J's existing pension provision was set out, including current transfer values - £73,134.72 and £66,024.07 for Mr J's plans with Provider P and Provider A respectively and £110,340.15 for Mrs J's plan with Provider A. About Mr J's plan with Provider P the report said, based on charges alone, transferring was likely to provide lower benefits at retirement. Higher charges for the new plan meant that that the new fund would have to outperform the old one by 2.3% pa to offset the higher charges. However, a transfer was still recommended.

MJR recommended, for both Mr and Mrs J, that the funds already held with Provider A be switched to a Flexi Access Drawdown arrangement (a SIPP) with Provider A with the holdings – a portfolio of funds in line with a cautious (level 3) ATR – to be held on Provider A's platform. MJR also recommended that Mr J's pension plan with Provider P be transferred to the new arrangement in order to try to improve performance although that wasn't guaranteed. That fund would be held in the pre-retirement element of the platform account.

I note that, in the 'Fund Selection' section of the report, there's a reference to risk profile 5 – Balanced. I think that must've been an error as under 'Targeted asset allocation' the report said the portfolio selected (which was the same for Mr and Mrs J) was to match the target asset allocation for risk level 3 – cautious investors. Full details of the asset allocation, funds and performance of the recommended portfolio were set out in an appendix to the report. Looking at that, the asset allocation was: 25% UK Corporate Bonds; 20% Cash – Short Term Money Market; 14% Global (ex UK) Fixed Income; 13% UK Equity; 8% North America Equity; 6% Emerging Markets; 5% Global Property; 3% Europe (ex UK) Equity; 3% JapanEquity; and 3% Developed Pacific (ex Japan) Equity. There was also a list of the recommended funds which I've mentioned further below.

The suitability report also set out charges, including Provider A's Annual Management Charge (AMC) for the platform. A discount was available which reduced the AMC from 0.25% pa to 0.22% pa. Fund managers charges might also be applied. The initial adviser charges were also given: For Mr J's pension with Provider A, that was £888.57 based on 1.75% of the assumed net value of £49,518.05 (the estimated net value after payment of the PCLS). And £1,279.86 for his plan with Provider P, again based on 1.75% of the assumed investment (£73,134.72). For Mrs J the charge would be £1,448.21, calculated on the same basis. There'd also be ongoing adviser charges which would be a percentage of the assets under management. The charges for any ongoing services would be deducted from the platform cash account. The report mentioned that, as and when appropriate, disinvestments of units would be made to place further money into the cash account, to continue to cover ongoing fees and charges. A charges summary table was also set out for each of the three funds that would be transferred.

Mrs J emailed the adviser on 29 November 2021, raising some points in advance of the meeting which had been scheduled for the next day (30 November 2021). Amongst other *things she queried why, when the report said, about Mr J's pension with Provider P, that transferring was likely to provide lower benefits, a transfer had been recommended.*

At the meeting on 30 November 2021 a 'cascade' letter was issued to correct some of the details in the suitability report. And Mr and Mrs J signed a document to say they'd received the report, its contents had been explained to them and they wished to proceed with the recommendations.

In late 2021/early 2022 the transfers to the new arrangement with Provider A went ahead. Provider P paid a transfer value of £73,372.61 to Provider A on 20 December 2021. MJR wrote to Mr and Mrs J on 19 January 2022 to confirm that the transfers from Provider A had been made to that Provider's platform account and that the PCLS had been paid – £16,506.10 to Mr J and £28,354.54 to Mrs J. And that their monthly contributions of £100 net pm each had been set up to start from 1 February 2022.

On 12 May 2022 Mrs J checked Provider A's platform online. She saw that the funds had reduced in value – approximately £17,000 for Mr J and £13,000 for her, so some £30,000 in total. Mr and Mrs J contacted the adviser and a review meeting was arranged for 17 June 2022. Prior to the meeting Mrs J checked again and saw that there'd been a further fall in value of over £8,000.

At the meeting Mr J decided to take his remaining PCLS (from that part of his fund formerly held with Provider P). He signed a letter dated 17 June 2022 to that effect and confirming that MJR hadn't recommended that and the decision to do so was Mr J's alone. He further confirmed that approximate current values had been provided to him and that MJR had agreed to act only in accordance with his instruction. Mr and Mrs J also told the adviser at the meeting that they didn't want to continue making their contributions of £100 net pm.

MJR wrote to Mr J on 24 June 2022 to confirm things – that during the recent review Mr J had advised that he wanted to fully crystallise the remainder of the Pre Retirement Accumulation segment to take the PCLS and that MJR hadn't recommended that. Mr J had signed a letter of instruction on 17 June 2022 and that instruction had been carried out and Provider A had made a payment direct to Mr J's bank account – I understand the amount was £15,101.23.

There was a further meeting in January 2023. No changes to Mr and Mrs J's investments were recommended. By October 2023 Mrs J had been in contact with Provider A as she'd seen contract letters in the online account which showed disinvestments had been made to meet fees. She was told by Provider A that it was possible to hold pension funds in cash, rather than investing in stocks and shares. There was a further meeting with MJR's adviser in early December 2023. Mrs J also contacted Provider P to query what Mr J's pension fund would've been worth had it not been transferred away.

In January 2024 Mr and Mrs J complained to MJR. Some of the main points from their letter of 14 January 2024 were:

- *They didn't know anything about pensions and were dependant on advice.*
- *They'd queried some of what the suitability report said and, in particular, the recommendation to transfer Mr J's existing plan with Provider P.*
- *They weren't able to access Provider A's platform until May 2022 when they were alarmed to see their fund values had fallen and so they immediately contacted the adviser. At the meeting on 17 June 2022 he'd advised to leave things as they were as he was confident the funds would recover. They'd stressed how much anxiety the falls in value had caused them and how uncomfortable they were with even relatively small reductions in value. Mr J had taken his remaining PCLS then as he hadn't*

dared leave it to diminish further (which it did). Although the adviser's position was that he didn't recommend that, he'd said 'I don't blame you'.

- *They hadn't realised until they'd spoken direct to Provider A in October 2023 that shares were being sold to meet fees. And they found out then they didn't have to invest in stocks and shares and they could've left their funds in cash. They'd then asked for a meeting with the adviser. They were disappointed with the outcome of that meeting (on 5 December 2023). The adviser had said, if things didn't recover in the next six months, they could look at lower risk options.*
- *They'd asked Provider P if it could provide details of the fund value if Mr J hadn't transferred away. In a letter dated 28 December 2023 Provider P said it would've been worth £84,985.39 on 1 February 2023 if the monthly premiums of £21.34 had continued to be paid or £84,577 if premiums had stopped. By 17 June 2022 the amount transferred (£73,372.61) on 20 December 2021 had fallen in value to £60,423.62 (so a reduction of £12,948.99 in six months).*
- *Mr and Mrs J raised four queries: First, why they hadn't been advised they didn't have to invest in the stock market and that they could've kept their funds in cash investments which would've meant a much lower risk; secondly, why they weren't advised to withdraw funds on a regular basis until they received their state pensions; thirdly, why the adviser had said, on 5 December 2023, that they could look at lower risk options when they'd thought they were in the lowest risk funds and, if not, they should've been; and fourthly, how had it been in Mr J's best interests to transfer his plan with Provider P and could anything be done to reverse that.*

MJR replied on 20 February 2024. MJR didn't uphold the complaint. In summary MJR said:

- *Mr and Mrs J had approached MJR for specific advice on crystallising at least some of their personal pension plans and leaving existing cash savings in place. They also wanted to make contributions of £100 net pm to their respective pension plans.*
- *A suitability report was produced. Mr and Mrs J raised some queries which were dealt with in the cascade letter. The suitability report recommended they use some of their existing cash savings rather than access their pension plans. But their preference was to take PCLS to repay a loan and help finance the return of Mrs J's brother from Australia. Mr J didn't want to take his PCLS from his pension with Provider P.*
- *Flexi Access Drawdown was most appropriate for them as they had no need or plans for further income. Moving the holding to a platform was recommended using a bespoke multi asset portfolio in line with their established ATR – level 3 – cautious.*
- *The suitability report said, after deduction of the PCLS, the funds would remain invested and Mr and Mrs J could leave it, take ad hoc withdrawals or a regular income, perhaps with extra occasional withdrawals – which would be subject to tax at their marginal rate. Or at any time an annuity could be bought.*
- *They'd signed the declaration confirming they'd received the suitability report, its contents had been explained and they wanted to proceed with the recommendations.*
- *Their ATR had been assessed as cautious, not extremely cautious. That had been discussed and a definition provided which they'd signed in agreement. The suitability report said they should get in contact if that risk profile no longer reflected their ATR. Holding the funds in cash would've been discussed if the risk questionnaires had confirmed they were risk averse. They'd agreed to the question in the risk profiling questionnaire that for their investments to keep pace with inflation it was necessary to take some investment risk. The overall result was that they were risk level 3 – cautious and they accepted that.*
- *The portfolio fitted that overall ATR. All investment sectors have been affected by global events and even portfolios invested cautiously were badly affected. They intended to invest for the medium to long term.*

- *The with-profits funds that Mr and Mrs J were invested in with Provider A were above their ATR. The fund fact sheet for Provider A's with-profits fund gives a risk profile of 3 (on a scale of 1 to 7 where 1 is low and 7 is high). That would be somewhere between 4 (Cautious Balanced) and 5 (Balanced) on the scale of 1 to 10 used by MJR and so above Mr and Mrs J's established cautious ATR.*
- *The suitability report did say, about Mr J's plan with Provider P, that, based on charges alone, transferring was likely to provide lower benefits in retirement and that the new arrangement would need to outperform the existing one by 2.3% pa to offset lower charges. But, at the time, Provider P was paying a substantial terminal bonus – the value of the plan was £36,315.99 plus a bonus of £36,415.18 with no MVA (Market Rate Adjustment). Final bonuses aren't guaranteed and a MVA may be applied before normal retirement date. Provider P's with-profits fund was also risk rated lower to medium which would equate to a 4 and so above Mr and Mrs J's established ATR.*
- *Research showed that as at October 2021 the recommended funds had outperformed Provider P's with profits fund over the previous one, three and five years. The recommended portfolio offered better potential for growth and reduced risk. Poor investment performance isn't within the scope of the complaint. And unexpected global events shortly after Mr and Mrs J had invested couldn't have been foreseen.*
- *Mr and Mrs J were advised verbally as to the fees and they were set out in the suitability report, service and payment agreement and the client agreement, all of which they'd signed. The suitability report said MJR would be providing ongoing investment services. And detailed that charges would be deducted from the cash account and units disinvested to place further money in the cash account to cover ongoing fees and charges.*

Mr and Mrs J replied on 1 March 2024. They didn't feel their complaint had been fully addressed. They didn't hold MJR responsible for poor investment performance. And they accepted they'd been made aware of the fees. But they didn't think it made good financial sense to have paid more than £6,000 in fees to see a reduction in their pension funds of £40,000.

MJR replied on 8 April 2024. In summary MJR referred to the risk profiling questionnaires it held on file. Responses to each question were discussed before the appropriate box was ticked. The result was level 3 – cautious. Signed acceptances were provided. There was nothing to indicate that Mr and Mrs J weren't prepared to take any risk with their capital. The advice would've been different if the questionnaires had shown them to be totally risk averse. The adviser didn't recall giving the impression that Provider P had a poor track record. The rationale for transferring was to reduce risk and provide more flexibility and transparency. The advantages of using an investment platform were detailed in the suitability report which said there was no guarantee of better performance.

Mr and Mrs J remained unhappy and referred their complaint to this service. One of our investigators looked into what had happened before issuing her view. She didn't uphold the complaint. In summary she said Mr and Mrs J had to transfer as they couldn't have accessed just their PCLS from their existing plans with Provider A and Flexi Access Drawdown was suitable for them. Their ATRs had been assessed as risk profile 3 – cautious. The asset allocation recommended – in the main bonds and index linked income funds – wasn't unsuitable. If the funds had been held in cash the values would've reduced due to charges and inflation. The falls in the values appeared to be due to market fluctuations which were outside MJR's control.

Mr and Mrs J didn't agree. They didn't think the investigator had taken into account all the *evidence they'd provided. Amongst other things, they didn't accept they'd signed to agree their ATRs were cautious – they said they hadn't seen that document previously. Mrs J had taken notes from the meetings and a summary was enclosed which she said showed they didn't want to expose their pension funds to any unnecessary risk. The adviser had said, due to the age of the plan with Provider P, he couldn't access it to see how well it was performing but, in his experience, Provider P didn't perform well and so Mr J may be better off combining both pensions. The asset allocation and recommended portfolio sections of the suitability report meant nothing to them and they'd told the adviser that. They'd paid a fee for their funds to be managed but the adviser never did that – he'd just said to leave things as they were as the markets would recover.*

As agreement couldn't be reached the complaint has been referred to me to decide.

What I've provisionally 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 read and considered everything but I'm going to focus on what I see as Mr and Mrs J's central concerns. They've mentioned some other issues, for example, not being given sufficient time to consider the suitability report and that it took a long time to set things up. But the main focus of the complaints is the suitability of MJR's advice to switch their existing pension plans and invest as they did.

It seems Mr and Mrs J may have been under the impression that they needed to take financial advice about their pensions as the values exceeded £30,000. If someone intends to transfer a defined benefit (final salary) pension they'll need to take financial advice if it's worth £30,000 or more. That's also the case if the pension offers guaranteed benefits – for example, a guaranteed annuity rate (GAR). Again, if the value is over £30,000, financial advice is required. Given that Mr and Mrs J were transferring personal pension plans which didn't offer GARs or other guaranteed benefits, obtaining financial advice wasn't a legal requirement. But I think, given they weren't experienced about pensions, they'd have sought advice anyway.

I don't think anything much turns on the detail of Mr and Mrs J's position – for example, the source of their cash savings, how that money was split between them and that any support for Mrs J's brother would be met just from her funds. Their overall situation was that they wanted to supplement their income. Mrs J's income had halved since she'd retired in 2019 and had started to draw her pension from her former employer. Mr J's income had reduced as he was only working three days pw and it would reduce further as he'd be cutting down to two days. Their income position would improve when they became entitled to their state pensions – which would be in April 2025 for Mr J and July 2027 for Mrs J. I note here the adviser's recommendation that Mrs J make up missing NI contributions so she'd get a full state pension which I think was appropriate.

The suitability report records that the adviser's initial advice was that Mr and Mrs J should use their substantial cash savings rather than accessing their pension plans. I think that was suitable advice. But it seems Mr and Mrs J didn't want to do that and preferred instead to utilise their pension savings. They accept that, to take their PCLS, they needed to transfer their existing plans to a different product. I think what the adviser recommended – that they transfer to a SIPP and a Flexi Access Drawdown arrangement – was suitable, at least in so far as their existing plans with Provider A were concerned. I've dealt separately below with Mr J's plan with Provider P. Transferring allowed them to take their PCLS and use that money to supplement their income as well as meet any other liabilities. Taking the PCLS was tax efficient as, regardless of any other income, no income tax was payable.

There doesn't seem to have been any consideration as to whether Mr and Mrs J needed to take all their PCLS from their plans with Provider A at once. I can't see any analysis of their income and capital requirements and which, as I've noted, don't appear to have been the same – in particular, it would be Mrs J who'd be meeting expenses in connection with her brother. The PCLS could've been taken in chunks, rather than all at the same time. Leaving as much invested as possible would give their pension savings more opportunity to grow. But it may be that Mr and Mrs J would've preferred the security of taking the money in one go and having it there to use as and when they needed. I'm not going to say the adviser was at fault here for not considering or recommending that Mr and Mrs J didn't take all the money at once.

On the basis the recommendation to transfer to allow Mr and Mrs J to take their PCLS wasn't unsuitable, I've considered the funds that were recommended for the new arrangement and if they were in line with Mr and Mrs J's ATR. I don't see there's any issue with the way in which their ATR was assessed. They were sent questionnaires in advance of the meeting on 10 August 2021. I can understand why they may have found some of the questions confusing and which resulted in them ticking more than one answer with a fresh questionnaire being completed during the meeting. However, I'd expect there to be some discussion about ATR and what's agreed won't always directly reflect what, at first sight, an investor's ATR might be or what they thought it was.

The outcome was that they were both risk level 3 – cautious and they appear to have signed to say they agreed with that. I note they dispute that. But they were given a lot of documents to sign and it's possible that they did sign the document MJR has produced even if they can't now recall. And the suitability report did record that it had been agreed they were risk level 3 – cautious and they'd signed to confirm that. A definition was also given and they were asked to say if that wasn't right.

I recognise that Mr and Mrs J had very little investment experience. Their pension savings were relatively modest and they had limited capacity for loss. But I don't think an assessment that they were risk level 3 (on a scale of 1 to 10) was out of line with their personal and financial circumstances. So I've proceeded on the basis that Mr and Mrs J's ATR was correctly assessed as cautious.

I know Mr and Mrs J are unhappy that they weren't advised that they could hold their funds in cash but I don't think, on the basis their ATR was cautious rather than risk averse, that the adviser should've recommended that.

I've considered if the funds recommended were suitable for a cautious investor. I've referred above to the targeted asset allocation set out in the suitability report, which as I've said was the same for both Mr and Mrs J. I think that's suitable for a cautious investor. It was made up of 59% in what I'd regard as low risk or cautious funds (25% UK Corporate Bonds, 20% Cash – Short Term Money Market and 14% Fixed Income), leaving a balance of 41% to be invested elsewhere.

I've also looked at the actual funds selected (which were again the same for Mr and Mrs J) and if they were in line with that target asset allocation. The funds and the proportions were as follows:

Royal London Corporate Bond	*10%*
Rathbone Ethical Bond Acc	*10%*
Schroder Long Dated Corporate Bond Acc	*10%*
JPM Global High Yield Bond C Acc	*7%*
M&G Global Convertibles I-H GBP Acc	*7%*

MI Chelverton UK Equity Growth B Acc	*9%*
Slater Growth P Acc	*9%*
AXA Framlington Global Technology Z Acc	*6%*
Baillie Gifford American B Acc	*6%*
First Sentier Global Property Securities B Acc	*5%*
Schroder Global Cities Real Estate Z Acc	*5%*
Schroder Pacific I Acc	*8%*
Baillie Gifford European B Acc	*4%*
BlackRock Continental European D Acc	*4%*

So, including the cash element (0.80%), 44.80% of Mr and Mrs J's funds were invested in bonds with the balance (55.20%) in equity based funds. I don't think that's in line with the recommended asset allocation. What seems to have happened is that the proposed cash/fixed interest investments weren't included so, although the bond holdings increased (from 25% to 34%), the remainder of the 20% allocated for cash/fixed interest investments meant an extra 11% was invested in equities instead. I recognise that some divergence from a recommended asset allocation may be acceptable but think that's a material difference and sufficient to shift the risk rating of the portfolios to above cautious. On that basis I think the portfolios were unsuitable for Mr and Mrs J as they were too high risk.

I've explained below what MJR needs to do to work out if Mrs J has suffered any financial loss as a result. I've said that MJR will need to compare the actual value of Mrs J's portfolio to what it would be worth if it had performed in line with the benchmark I've indicated and which, as I've said below, would reflect the sort of return a cautious investor might expect. As the award I've made is formulaic and a calculation is required, I don't know what, if any loss, it will show.

Mr and Mrs J have referred to the adviser's fees and those payable to Provider A. And they've queried whether they really needed an ongoing advice service. I think Mr and Mrs J accept that they were told about the fees, including that investments would be sold to top up the cash account to meet fees. I'm not making a separate award in respect of charges as these were paid out of Mr and Mrs J's funds and so the actual values used for the comparative fund value calculations will reflect the values after deduction of fees.'

I went on to set out what MJR needed to do to put things right for Mrs J.

Both parties responded to my provisional decision. MJR didn't agree with what I said. And, although she accepted my provisional decision, Mrs J did make a number of further points on behalf of herself and her husband.

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 considered the further comments made in response to my provisional decision.

Mrs J said that she and her husband had been led to believe that 'cautious' was the lowest ATR they could have and that was the reason the ATR questionnaires were amended as 'no risk' wasn't permitted. Due to their lack of investment experience they hadn't queried that. I think Mr and Mrs J are now aware that other, lower, ATRs are possible. Such as very cautious or even risk averse. Some confusion may have arisen because there will be a need to ensure an investor who may indicate they don't want to take any degree of risk is aware of the effects of charges and inflation and that some growth is needed if those factors are going to be outweighed. But that won't translate into an obligation to accept some risk if an investor isn't comfortable with that.

Here Mr and Mrs J knew they'd been assessed as being risk level 3 (on a scale of 1 to 10) so I think they'd have known that other, lower, risk profiles did exist. And, even if their original answers on the questionnaires they'd completed themselves were different, they haven't said they were prompted by the adviser to give answers they weren't comfortable with. Mr and Mrs J maintain they didn't sign the ATR questionnaire. But, as I noted in my provisional decision, the suitability report recorded that it was agreed they were risk level 3 – cautious and set out what that meant. And they did sign to confirm that the contents of the suitability report had been explained to them and they wished to proceed.

I note what they say about what's happened since, including that Mr J's ATR has recently been re(assessed) as 'Very Cautious' (although Mrs J's ATR remains cautious). But what I'm looking at is whether their ATRs were correctly assessed in 2021. Falls in investment values may prompt an investor to rethink the level of risk they are prepared to take. I don't think it's necessarily the case, if Mr J's ATR is now 'Very Cautious', it must follow that was his ATR in 2021. I still think Mr and Mrs J's ATRs were correctly assessed in 2021 as cautious.

MJR says it understood from the investigator's letters of 15 January 2025 – the investigator's view and covering letter – that Mr and Mrs J would have to provide further evidence or representations if they wanted their cases to be considered by an ombudsman. I don't think that's quite what the investigator said. At the end of her view the investigator said, if Mr and Mrs J didn't accept what she'd said – and they wanted an ombudsman to make a final decision on their complaint – they must provide **any** (my emphasis) further evidence or representations by the date specified. If either party doesn't accept the investigator's view then they can request an ombudsman's decision, even if they don't provide any further evidence or representations.

In any event, Mr and Mrs J did make further comments. In my provisional decision, after summarising the investigator's findings, I noted that Mr and Mrs J hadn't agreed with what the investigator had said and I set out some of their further comments. These included that Mrs J had taken notes at the various meetings, what they'd said about not understanding some sections of the suitability report and feeling that their funds hadn't been managed.

MJR doesn't agree that Mrs J's records are accurate. I accept that, in the absence of the meetings having been recorded, it's not possible to say with certainty exactly what was said and in what context. I'd also agree that Mr and Mrs J signed to say they understood the suitability report. Further, advice to leave things as they were is still advice. I agree that fund switches, although an understandable reaction to falls in value and wanting to avoid further losses, may mean missing out on any recovery in values and so holding on might be the better plan. But my (provisional) decision didn't turn on what may have been discussed at the various meetings but on the suitability or otherwise of the (original) advice Mr and Mrs J were given, including the suitability of the investment portfolios initially recommended.

I understand that, more recently, some changes to the portfolios have been recommended. But I'm looking at what MJR recommended in 2021 and on the basis that Mr and Mrs J's ATR had been correctly assessed as cautious. Essentially what I need to consider is whether the recommended portfolios matched a cautious ATR.

I said in my provisional decision that the asset allocation set out in the suitability report matched a cautious risk profile. But I'd also looked into the funds that had actually been selected and which I said weren't in line with the asset allocation indicated. In particular I said that the proposed cash element had been reduced. MJR didn't dispute that and said that the proposed cash holdings were reduced due to low interest rates. While I agree that low returns on cash is a consideration, any alternatives and changes to the recommended asset allocation should still ensure that the overall portfolio is in line with the agreed ATR so that the portfolio contains a sufficient proportion of lower risk assets so as to be appropriately balanced for a cautious investor.

MJR has said it's my personal view that the portfolios were too high risk. I agree that portfolio construction isn't a precise science and different professional opinions may prevail. There are no specific rules defining suitable portfolio make up for different levels of risk and different businesses and advisers will favour different theories, methods and information sources. There are also a large number of tools available for modelling portfolios, such as the one MJR has referred to and detailed analytics for factors such as fund risk scores and volatility. But such tools, whatever their purpose, can only offer a partial insight or solution. There does come a point when, on an objective analysis, it's clear that a portfolio isn't aligned to the degree of risk the client has agreed to take.

Changes to the target asset allocation wouldn't of themselves make the portfolio unsuitable, provided the new asset mix remained appropriately balanced for a cautious investor. And, if Mr and Mrs J had been invested in suitable funds, even if they'd suffered losses, MJR wouldn't be responsible – an adviser won't be responsible for investment performance and can't be expected to predict market movements or the effect of economic, political or global factors on particular asset classes or investments generally.

I set out in my provisional decision the recommended funds and the relevant proportions. I took those from the Appendix to the (joint) suitability report. The recommended funds appeared to be the same and in the same proportions for Mr and Mrs J (although the JPM Global High Yield Bond Fund is shown last for Mr J but fourth for Mrs J). However, it appears from what MJR has said in response to my provisional decision, that there might have been some divergence in that Mrs J's portfolio included some 9.3% in Global Property. MJR refers to that as a lower risk asset but I wouldn't necessarily agree. It's an equity based fund which, according to Trustnet, invests at least 70% in shares of companies involved in property around the world and listed on exchanges worldwide. And the FE risk score (which I understand to be based on volatility relative to the FTSE 100) shown would indicate that it's not a low risk fund. So I don't think means that a higher proportion of Mrs J's funds were held in lower risk investments. Nor do I think the fact that emerging markets funds were discounted materially changes anything.

All in all I maintain what I said in my provisional decision. The target asset allocation for both Mr and Mrs J was about 60% in low risk or cautious funds (made up of UK Corporate Bonds, Cash or Short Term Money Market and Fixed Income funds). But Mr and Mrs J didn't end up with that. Only about 45% of their funds were invested in what might be regarded as lower risk investments (cash and bonds) with the balance – over 55% – in equity based funds. I think that exposed them to more risk than, as cautious investors, they should've been expected to bear. I'd add that the bonds were all corporate bonds which are generally considered higher risk than, for example, UK government bonds.

All in all my views remain as set out in my provisional decision. I've repeated what I said above and it forms part of my decision. For the reasons I've indicated I'm upholding the complaints. MJR will need to put things right for Mrs J as I set out in my provisional decision and which I've repeated here.

Putting things right – fair compensation

My aim is that Mrs J should be put as far as possible in the position she'd be in now if she'd been given suitable advice. Essentially that means the fund she had with Provider A which she switched to the new arrangement with Provider A would've been invested differently.

So MJR must compare the new portfolio's performance (from the date of the switch to the date of my final decision) with this benchmark: For half of the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds. If the benchmark shows a higher value than the actual value, there's a loss and compensation is payable.

The compensation amount should if possible be paid into Mrs J's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mrs J as a lump sum after making a notional reduction to allow for future income tax that would otherwise have been paid.

If Mrs J has remaining tax-free cash entitlement, 25% of the loss would be tax-free and 75% would have been taxed according to her likely income tax rate in retirement – which I'd assume to be 20% here. So making a notional reduction of 15% overall from the loss adequately reflects this. If there's no remaining tax-free entitlement, the deduction will be 20%.

MJR should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

Any additional sum paid into the investment should be added to the fair value calculation from the point in time when it was actually paid in. Any withdrawal should be deducted from the 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'll accept if MJR totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

The calculations should be done as at the date of my final decision. Any compensation due but remaining unpaid 28 days after we've notified MJR of Mrs J's acceptance of my decision will attract a return in accordance with the benchmark specified above.

Why is this remedy suitable?

I've decided on this method of compensation because:

Mrs J wanted capital growth and was prepared to accept a small risk to her capital.

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

The FTSE UK Private Investors Income Total Return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's a fair measure for someone who was prepared to take some risk to get a higher return.

I consider that Mrs J's risk profile was in between, in the sense that she was prepared to take a small level of risk to attain her investment objectives. So, the 50/50 combination would reasonably put Mrs J into that position. It doesn't mean she'd have invested 50% of her money in a fixed rate bond and 50% in some kind of index tracker investment. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mrs J could've obtained from investments suited to her objectives and ATR.

Details of the calculation should be provided to Mrs J in a clear and simple format.

MJR should also pay Mrs J £250 as compensation for the distress and inconvenience MJR's unsuitable advice has caused.

My final decision

I uphold the complaint. Michael John Rice must redress Mrs J as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J to accept or reject my decision before 9 June 2025.

Lesley Stead
Ombudsman