

## **The complaint**

Mrs A complains about the fees Scottish Widows Schroder Personal Wealth Limited ('SPW') has charged for ongoing advice, after giving her investment and pension advice. Mrs A says that the meetings and reviews that have taken place have not provided any value and she is also unhappy with the performance of the products which SPW originally recommended to her.

Mrs A says, when she asked to cancel the ongoing reviews, SPW explained that without that service she'd be liable for additional charges to make transactions. She says she wasn't notified of this when she first took advice and believes these charges to be unfair and that they mean the ongoing advice service was not really optional.

Mrs A's husband, Mr Q, has brought a separate complaint against SPW along similar lines. While this decision will only deal with Mrs A's complaint, some circumstances of Mr Q's complaint are relevant here as the advice and interactions between SPW, Mrs A and Mr Q took place at the same time. So, where necessary, I'll refer to some of the circumstances of Mr Q's complaint below.

## **What happened**

The initial contact, which led to the advice given to Mrs A, was between Mr Q and SPW in September 2021. Mr Q became aware of SPW through his bank.

Mrs A and Mr Q had several virtual meetings with SPW which we've been provided audio recordings of. The first was on 16 September 2021, solely with Mr Q. In this meeting, SPW gathered some information about his objectives as well as Mr Q and Mrs A's circumstances and Mr Q's attitude to risk.

Mrs A was 39, married to Mr Q (who was 38) with three children under the age of ten. Mrs A wasn't working at the time. Mr Q was employed, in a well-paying role. They owned their own home with an outstanding mortgage of approximately £330,000. Mr Q had accumulated shares in the company he worked for worth in excess of £50,000, he and Mrs A had savings of around £135,000 and owned some land overseas worth roughly £50,000.

Mr Q told SPW he'd been thinking about investing for some time. He'd been discussing investments with friends, including high risk ones such as crypto currency. He liked the idea of high returns, and hoped to build funds to support his children's education, but wasn't as keen on taking high risk. Mr Q mentioned he hadn't invested in shares before and was thinking of potentially using some savings to purchase another property, with one potentially being used as a buy-to-let. He was initially thinking of potentially investing £100,000, with half in a medium risk fund and half in an aggressive fund. He said, while losing this level of money would be upsetting, his and Mrs A's day to day life would not be impacted and he'd agreed, when discussing with friends, that he would only invest as much as he was willing to lose.

SPW discussed the six different risk profiles it used, and that it didn't recommend very high-risk investments. The adviser discussed the potential returns for each risk profile, based on

past performance and the potential strength of the market. But they noted that these returns were not guaranteed.

SPW assessed Mr Q's attitude to risk ('ATR') as medium – high risk, or a four on its scale with six being very high risk and one very low risk. It highlighted that there could be tax benefits to Mr Q if he increased his pension contributions and that it could be worthwhile establishing a personal pension for Mrs A. And it gave information about ISA's, the annual allowance for those and the related tax benefits.

A further meeting took place on 1 October 2021, at which Mrs A and Mr Q were both present.

Mr Q said, after the last conversation, he was going to increase contributions to his pension. And he and Mrs A were looking to use their ISA allowances.

SPW carried out an assessment of Mrs A's ATR and determined that this was very low risk. The adviser said to Mrs A that they'd previously talked to Mr Q about Mrs A potentially starting a pension. But very low risk investments wouldn't be a good fit for a pension. Mrs A understood that investing in a pension would entail some risk and was happy to accept this, preferring a low-risk approach.

Mr Q said he was now looking to invest £40,000 in total, rather than the higher figure previously discussed, utilising both his and Mrs A's ISA allowance. As he was thinking about investing a lower amount, he said he had also thought about potentially investing the entire amount on a high-risk basis, but a split between medium and higher risk was still what he'd probably seek. Again, he noted he was only investing an amount that he could afford to lose.

SPW provided a written recommendation to Mrs A and Mr Q, dated 7 October 2021. It recommended that Mrs A open a self-invested personal pension ('SIPP') with a provider which I'll call 'Firm F'. It said she should invest £2,880 (net) being the maximum contribution for which she'd receive tax relief and that these funds be invested through SPW's Personal Discretionary Portfolio Service ('PDPS') in a 'balanced' portfolio which it said was in line with her ATR. This would achieve her stated aim of creating a pension pot for retirement. In its advice it said, although it would cost more, the SIPP was at least as suitable as a stakeholder pension was for Mrs A, given it provided access to a significantly wider range of investments.

SPW also recommended that both Mrs A and Mr Q open investment ISA's, with Firm F again being the provider. It said they should each invest £20,000, the maximum they could in that tax year. The investments were again to be via the PDPS with Mr Q's invested in the 'dynamic' portfolio and Mrs A's in the 'balanced'. It said that this met the objective of investing for growth at different levels of risk and Mrs A had said she was happy to take risk as she understood the investments were intended for the longer term and to benefit her children.

SPW said it also recommended that Mrs A and Mr Q take up its on-going advice review service. It said this met their needs of being able to monitor their investments on an ongoing basis and because their plans for the future were not set in stone, meeting annually and having the option for ad-hoc reviews would enable them to update their plans quickly. The suitability report included a section on charges which set out the initial one-off advice fee of 1.75% and confirmed that the charge for ongoing advice was 0.65% per annum.

I can see that Firm F produced an illustration for Mrs A's SIPP that also set out that her adviser's ongoing advice charge was 0.65%. Firm F's terms and conditions also explained that, to use its platform, a customer had to appoint a financial adviser. And if they dismissed

their financial adviser, their accounts would be treated as being operated on a non-advised basis, which offered a more limited service including that any transfers in would be invested in cash.

Mrs A and Mr Q had another virtual meeting with SPW on 15 October 2021. In this meeting, SPW talked through the recommendation report. It reiterated it had recommended a balanced investment for Mrs A's funds as for a longer-term investment some risk was necessary. Mrs A said she understood and was comfortable with this and she also confirmed that she'd agreed Mr Q could use her ISA allowance to make investments.

There was then a discussion about the various fees with SPW recapping the 1.75% initial fee and the ongoing fees (for ongoing advice as well as platform and discretionary fund management fees). Mr Q asked, if they wanted to invest again in the ISA the following year what the fees would be and SPW explained that if paying for ongoing advice there wouldn't be another upfront fee, just the annual charges.

Mr Q asked again about the risk profiles and projections, which SPW reiterated were not guaranteed. It explained that the funds were managed by it under the PDPS and that it felt the 'dynamic' portfolio for Mr Q and 'balanced' profile for Mrs A were a good starting point based on their ATR's. Mr Q indicated he was still thinking about potentially investing some of the funds at a higher level of risk and he'd consider his decision before their next conversation.

A further virtual meeting took place on 16 November 2021. SPW outlined the products that it had recommended again and the ongoing charges. Mr Q said that they now wanted Mrs A's ISA to be invested in the 'progressive' portfolio. SPW pointed out this was a higher level of risk than the 'balanced' which was already more than her ATR had suggested. But Mrs A confirmed she was happy with this. SPW asked if Mrs A also wanted her pension to be invested in the 'progressive' portfolio, given the investments would be the same just held in a different wrapper. Mr Q and Mrs A commented that perhaps the pension should be 'adventurous' - an even higher risk level still. SPW said, as the SIPP would be invested for a longer term that there was a case for it to be invested differently. And on this basis Mrs A and Mr Q agreed to the SIPP being invested in the PDPS adventurous portfolio.

The meeting was concluded with the applications and declarations being completed verbally.

SPW sent Mrs A and Mr Q a letter, dated 16 November 2021, confirming that following the discussion, and because they'd liked the potential for better growth, Mrs A's SIPP was now being invested on an 'adventurous' basis and the ISA in her name on a 'progressive' basis.

Account statements indicate that the ISA's and SIPP were set up and investments made on 1 December 2021.

SPW wrote to Mrs A and Mr Q on 13 April 2022, summarising a review meeting that had taken place the previous day. It said the purpose of the meeting, as directed by Mrs A and Mr Q, had been to discuss adding further funds to their investments – as they'd now entered a new tax year. SPW summarised that it believed the risk portfolios that the investments were held in remained suitable based on their objectives. And it recommended that Mrs A and Mr Q invest a further £20,000 each into their ISA's and that Mrs A invest a further £2,880 net into her SIPP to benefit from investment growth and the tax advantages these products offered.

Mrs A and Mr Q accepted these recommendations and further investments were made into the accounts on 19 April 2022.

I've seen an email exchange between Mr Q and SPW on 6 and 7 March 2023. The first email from SPW thanked Mr Q for his time during a meeting that day, gave information about the ongoing advice charge that would be payable based on the current portfolio value and set out what the charge would be for future advice (1.75%) if the ongoing service was cancelled – which was the same as for new business. Mr Q said he didn't think he got much value from the call and ongoing advice and didn't believe it was actually optional. SPW acknowledged that the recent performance of the fund had been disappointing. Mr Q then replied saying he wasn't even aware he was being charged 0.65% for the ongoing meetings, was disappointed with the service and would conduct his own research and get back to SPW.

SPW wrote to Mrs A and Mr Q on 7 March 2023 saying it enclosed their ongoing advice report and summarised their recent discussion. It noted that Mrs A and Mr Q thought the recent performance of the investments had been disappointing and that they thought they could have gotten the same return from holding their funds in cash. SPW noted recent market turmoil but said that recovery had begun and it was important to view the investments as long term. It noted that Mrs A and Mr Q had also questioned the value for money the ongoing advice service gave.

SPW said it felt the investment risk profiles and portfolios being used still aligned with Mrs A and Mr Q's long term aims so didn't recommend any changes. The new tax year had not yet begun so, while further investments in the ISA's and SIPP were being considered, Mrs A and Mr Q were going to assess their options.

Mrs A and Mr Q then complained to SPW about the ongoing advice fees as they didn't think the service had added any value. They were also unhappy with the performance of their investments.

SPW didn't uphold their complaint. It first noted that the fees for ongoing advice were not linked to the performance of the investments. It said that the ongoing advice service provided Mrs A and Mr Q with annual reviews but more than that it also gave direct and ongoing access to a financial adviser, access to insights, webinars and other resources to broaden financial knowledge, valuable expertise in respect of capital gains tax and tax planning, quarterly statements and access to a live investment portal. It noted that Mrs A and Mr Q had been provided with annual reviews as required and these had included further recommendations.

It said the adviser was correct, if Mrs A and Mr Q opted out of the ongoing advice service, that there would be fees payable for any further investments. It noted that Mrs A and Mr Q had said that this hadn't been made clear to them when they initially invested. But SPW said, as it had deemed ongoing advice was appropriate and they'd agreed to this service, it didn't think it had made an error by not outlining the alternative charging structure at the time.

Unhappy with SPW's response, Mrs A asked us to look into her complaint. She and Mr Q didn't think what SPW had said about what the ongoing service provided was accurate, arguing they'd have always been entitled to some of the things listed such as regular statements. And they remained unhappy with the performance of their investments.

One of our Investigators considered the complaint and said they thought it should be upheld in part. They thought SPW had provided the agreed ongoing service and that the advice to take out an ISA was suitable for Mrs A. But the Investigator thought the SIPP recommended by SPW had not been suitable.

SPW said, having reviewed the SIPP advice again internally, it agreed with the Investigator that this was not suitable.

Mrs A didn't accept the Investigator's findings and asked for an Ombudsman to review the matter. In summary she said, while the reviews had taken place these weren't as in depth as they should have been and SPW's charging structure meant this wasn't optional. She also remained unhappy with the performance of the investments and said that the advice as a whole wasn't suitable or independent because SPW had only recommended products with it.

I issued a provisional decision earlier this month explaining that I thought Mrs A's complaint should be upheld in part. Below are extracts from my provisional findings, explaining why, which form part of my final decision.

*I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.*

*As a regulated firm, SPW had many rules and principles that they needed to adhere to when providing advice to Mrs A. Many of these are found in the regulator's, the Financial Conduct Authority ('FCA'), handbook under the Principles for Businesses ('PRIN') and the Conduct of Business Sourcebook ('COBS').*

*In relation to ongoing advice charges, the following provides useful context for my assessment of SPW's actions here.*

*In 2014, the FCA produced guidance in the form of a factsheet titled "For Investment advisers - Setting out what we require from advisers on how they charge their clients". The factsheet said:*

*"Ongoing adviser charges*

*Ongoing charges should only be levied where a consumer is paying for ongoing service, such as a performance review of their investments, or where the product is a regular payment one. If you are providing an ongoing service, you should clearly confirm the details of the ongoing service, any associated charges and how the client can cancel it. This can be written or orally disclosed. You must ensure you have robust systems and controls in place to make sure your clients receive the ongoing service you have committed to."*

*While the factsheet wasn't published until late 2014, it didn't mark a change to the rules firms like SPW were already expected to follow. Rather it re-enforced or reminded firms of the standards already in place when providing on-going advice services.*

*There are specific rules and guidance within COBS about ongoing advice charges. COBS 6.1A.22 says:*

*"A firm must not use an adviser charge which is structured to be payable by the retail client over a period of time unless (1) or (2) applies:*

*(1) the adviser charge is in respect of an ongoing service for the provision of personal recommendations or related services and:*

*(a) the firm has disclosed that service along with the adviser charge; and*

*(b) the retail client is provided with a right to cancel the ongoing service, which must be reasonable in all the circumstances, without penalty and without requiring the retail client to give any reason; or*

- (2) *the adviser charge relates to a retail investment product or a pension transfer, pension conversion or pension opt-out or arrangement with an operator of an electronic system in relation to lending for which an instruction from the retail client for regular payments is in place and the firm has disclosed that no ongoing personal recommendations or service will be provided.”*

*And from 3 January 2018, arising from MiFID II, COBS 9A.3.9 explained that investment firms providing a periodic suitability assessment shall review, in order to enhance the service, the suitability of the recommendations given at least annually.*

#### *Ongoing advice charges*

*I'm satisfied that Mrs A was made aware of the cost of ongoing advice before she agreed to receive that service. The cost, 0.65% per annum, was discussed in several of the meetings between her, Mr Q and SPW. SPW's tariff of charges document, which set out this ongoing cost and the alternative cost of one-off advice, was also discussed and referred to during the virtual meeting and mentioned as one of the documents that had been shared. SPW's written recommendation clearly disclosed the cost and the illustration from Firm F for Mrs A's SIPP also referred to this. I'm also satisfied from the recordings I've heard that Mrs A understood the cost of this service and she agreed to it.*

*SPW has provided a copy of its leaflet about its ongoing advice service which summarises what this offered. This included, amongst other things, direct ongoing access to a support team and financial adviser and annual reviews. And this mirrors the explanation given to Mrs A during the virtual meetings with the adviser.*

*The initial advice was provided to Mrs A in October and November 2021. SPW conducted annual reviews in April 2022, when it recommended further investment into her ISA and SIPP, and in March 2023. And it sent written summaries of these reviews and the reasons for the recommendations. So, SPW did what it said it would by conducting a review at least annually. The ongoing service was cancelled prior to another review becoming due.*

*Mrs A has said that she didn't feel these reviews added any real value. But ultimately SPW has provided the agreed service, which has included giving additional recommendations. So, I can't reasonably say that it has done anything wrong or that it needs to refund the charges for the ongoing advice service which it provided to Mrs A.*

*Mrs A has argued that the service is not truly optional because, by cancelling it, she would have to pay a higher charge of 1.75% if she wanted to make further investments into her ISA and SIPP. But I don't agree that the service is not optional.*

*SPW's tariff of charges, which were discussed and shared with Mrs A and Mr Q, outlined that the cost of one-off advice was 1.75% and the cost of ongoing advice was 0.65%. If a consumer took ongoing advice, there wouldn't be further one-off fees – essentially meaning a benefit of the ongoing service was a saving on these fees in the future. At the same time it follows that if they chose not to take ongoing advice, but then used SPW's services at a later date, this would be considered a new instance of advice, and a further one-off charge would be due. I don't agree that this means that taking ongoing advice was not optional. It is simply the case that SPW had two charging structures, and a consumer could choose which option they preferred.*

*Mrs A has argued that it wasn't made clear that she'd be subject to these further one-off fees if she cancelled the ongoing advice. But again the tariff of charges did set these alternatives out. I acknowledge that during the virtual meetings, the alternative of not taking ongoing advice wasn't discussed in detail. But I don't think that was unreasonable.*

Mrs A and Mr Q indicated during the virtual meetings that the investments being made were part of their longer-term plan, that they'd want to monitor these and may well make changes to these moving forward – to the risk profile being used and potentially make further deposits for tax efficiency (which they did go on to do). As I've said Firm F's terms and conditions explained that, to use its platform, a customer had to appoint a financial adviser. And without an adviser, ongoing services would be limited, including that any transfers in would only be invested in cash. So, with that and Mrs A and Mr Q's stated aims in mind, I think it was reasonable for SPW to recommend that they take up the ongoing advice service, as this would save on future one off fees when they came to make changes. And so, as this was a suitable recommendation, I don't think SPW needed to discuss the alternative scenario in detail at that time, as it was less suitable as it was likely to be more costly.

When Mrs A sought to cancel the ongoing service, SPW set out what this would mean. The charges it said she'd incur were in line with its tariff of charges, which applied to all customers. So, overall, while I know this will come as a disappointment to Mrs A, I'm satisfied, in terms of the ongoing advice service and fees, SPW has not done anything wrong.

#### Suitability of the initial advice and investment performance

Beyond the fees which I've addressed above, Mrs A's main complaint was about the performance of the investments SPW recommended to her.

A complaint purely about investment performance is not one I would typically uphold. SPW was clear in its discussions and recommendation to Mrs A and Mr Q that the potential growth rates referenced for the different risk portfolios were not guaranteed – which they said they understood. And while I understand that Mrs A is disappointed with the performance (particularly growth) of her investments since the advice, SPW was clear, and she indicated she understood, a long-term view was needed. The nature of investing means returns aren't guaranteed.

So, if Mrs A understood the risk she was taking but she thinks her investment should have produced a better return than it has, this alone is not grounds for me to uphold her complaint. But, if Mrs A did not understand the risks involved, or the investments weren't in line with the level of risk she was prepared to take, then this speaks to the overall suitability of the investments. I've considered this in respect of the two different products that were recommended to Mrs A.

#### ISA

SPW gathered information about Mrs A and Mr Q's joint circumstances and finances. It recorded that they didn't have any issues with debts, which the information I've seen all supports, that they had extensive savings and had capacity for some losses without impacting their day to day lives. The objective of investing to achieve capital growth, with the aim of building a fund for their children's education, was recorded as a joint goal. I think this was reasonable. Although I do note it was primarily Mr Q that discussed this with SPW, that he was interested in splitting the investments between medium and high-risk portfolios and the conversations tended to be framed as him being the one undertaking the majority of the investment.

Utilising ISA allowances was discussed as a tax efficient way of achieving the investment objectives. Mr Q confirmed that he and Mrs A hadn't used their ISA allowances up to that point and I think the recommendation to invest in this way was suitable, particularly given the amounts that Mrs A and Mr Q were looking to invest.

*SPW, being backed by a high street bank – of which Mr Q was a customer which is how he and Mrs A came into contact with SPW – offered restricted advice on a set list of products from a limited number of providers. This is something that the relevant bank confirms in its information about SPW, noting that SPW doesn't offer independent financial advice. On this basis SPW recommended investment ISA's with Firm F to Mrs A and Mr Q. And I haven't seen anything to suggest this recommendation was unsuitable.*

*Mrs A and Mr Q had individual ISA allowances of £20,000 for the relevant tax year. And the ISA's needed to be established in their individual names. But Mrs A told SPW during the meetings they held around the advice that she was happy for Mr Q to use her ISA allowance for the purposes of investing. And in the specific circumstances, I think this is an important distinction, as I'll explain.*

*SPW did carry out an assessment of Mrs A's attitude to risk, which it recorded as being very low. During the meetings with Mrs A and Mr Q, SPW discussed with her that, in order to achieve growth, she would typically need to take some risk with her investments. And Mrs A acknowledge and agreed with this.*

*Following these conversations, SPW recommended that Mrs A take out an ISA and invest in a 'balanced' portfolio (which fell within its 'medium risk' designation). Its advice acknowledged that the level of risk of these investments was above her ATR. But it referenced that she'd agreed this was necessary to achieve the stated goals.*

*I don't think what SPW said about some risk being required, to achieve the level of growth that Mrs A was hoping for, is unreasonable. And I do note she agreed with this. But that doesn't mean taking that level of risk was necessarily in her best interests. And had it been the case that Mrs A alone had asked for advice on investing, I don't think the recommendation that she take substantially more risk than she was comfortable with, would necessarily have been suitable for her, even with the capacity for some loss.*

*But here, she confirmed to SPW that she was happy for Mr Q to utilise her allowance for investing, to meet their joint objectives. And the intention appears always to have been that the ISA, while held in Mrs A name, was done so by proxy and the underlying investment was being managed by Mr Q to achieve their joint objectives, in line with his ATR. I still think it was important for SPW to understand Mrs A's attitude to risk and for it to provide clear information to ensure she understood the level of risk being taken. But I'm satisfied from the information in the recommendation, and which was discussed, that Mrs A did understand this. And in Mrs A and Mr Q's specific circumstances, I think the advice that the ISA be invested at a higher level of risk than her ATR was suitable, given how it was to be used.*

*Mr Q told SPW that his intention was to split their investments between medium and high risk. And following the advice to invest Mrs A's ISA on a balanced basis, she and Mr Q told SPW that she in fact wanted her ISA to be invested on a 'progressive' basis (falling in its 'medium to high' risk designation). This was a higher risk than the 'balanced' portfolio, and even further out of line with her ATR. But it was in line with the objective Mr Q and Mrs A had given of splitting the investment risk levels across the ISA's (as Mr Q's was invested on a 'dynamic' portfolio basis – also within SPW's 'medium to high' risk designation but greater risk than 'progressive'). And so, for much the same reasons that I think recommending a 'balanced' portfolio was not unsuitable here, I don't think it was unreasonable of SPW to agree to and endorse this.*

*Mrs A's ISA's investment portfolio had around 60% invested in equities, 14-15% in fixed interest and cash funds, 5% in property and the remainder in other and alternative investments. SPW has provided evidence that these levels were rebalanced to remain broadly the same from the point of advice throughout it providing ongoing advice. And the*



quarterly statements for the ISA indicate that the investment spread was across a range of funds and sectors, with some investments being changed over time.

Based on what I've seen I think the portfolio was reasonably well diversified and consistent with the 'progressive' risk profile that was agreed. And so, I think it was suitable and in line with the stated objective of wanting to generate capital growth.

Again, I know Mrs A is disappointed with the performance of the investments. But while I know she does not agree, I think the performance was down to market conditions and not because SPW acted unfairly or unreasonably. As I've said, I'm satisfied the portfolio was in line with the agreed ATR and appears to have been managed in line with that. And I'm satisfied the investment portfolio was suitable. So, in respect of its recommendation and management of Mrs A's ISA, I don't think SPW has done anything wrong here.

### **SIPP**

While I'm satisfied that Mrs A's ISA, while held in her name, was intended to be run in line with her and Mr Q's broader objectives, the SIPP that was set up was very much described as being for her retirement.

Again, SPW identified her ATR as very low. But it initially recommended that the SIPP be invested on a 'balanced' (medium risk) basis. And after speaking to Mrs A and Mr Q then endorsed it being invested on an 'adventurous' (high risk) basis.

Our Investigator didn't think this was suitable in Mrs A's circumstances, didn't think she had need for a SIPP or access to the larger range of investments it offered when compared to a simpler more low-cost option like a stakeholder pension and so didn't think the recommendation was suitable. And I tend to agree.

I don't think the advice to Mrs A to open a pension was unsuitable. The information SPW had about her circumstances was that she didn't have any retirement provisions in her name at the time. She had the available capital to open a pension (and benefit from the associated tax relief). So, I think the recommendation that she do so was in her interests. And I think she would likely have opened a pension at that stage. But I don't think Mrs A needed to open a SIPP, and have access to a wide range of investments, given her attitude to risk. And I think a simpler, lower cost pension would have been more appropriate. And I don't think the recommendation that she invest in an adventurous portfolio was suitable, based on her attitude to risk.

SPW has accepted though, in response to our Investigator's opinion, that the advice to open the SIPP and invest on an adventurous basis was unsuitable for Mrs A. As such, I don't need to go into any further detail about this here. So, I uphold this part of the complaint and will explain how I think SPW should put this right.

### **Putting things right**

My aim is that Mrs A should be put as closely as possible into the position she would probably now be in if she had been given suitable advice.

I take the view that Mrs A would still have opened a pension following the advice from SPW. But I think she'd have invested differently.

I would note that what I've recommended differs slightly from what our Investigator suggested. I'll explain why.

*The Investigator said, in addition to calculating whether Mrs A had incurred a loss based on how the pension was invested, SPW should also separately refund the portion of the ongoing advice fees charged in relation to the SIPP. But I don't think these need to be refunded. As I've explained, I'm satisfied that SPW provided the annual reviews as agreed. Furthermore, the comparison of the SIPP to a suitable alternative, and calculation of redress if due, already takes into account the advice fees in respect of the SIPP (both the initial advice and the ongoing advice fees). This is because they were deducted directly from the balance of the SIPP. So, if Mrs A is worse off than she should have been and has incurred a loss, the calculation would provide compensation for this, including refunding fees. And to refund them separately would mean they were accounted for, and Mrs A compensated, twice. Which isn't fair and reasonable.*

*The Investigator also recommended that SPW cover the cost of the initial advice Mrs A would likely have to pay for if she now wanted to transfer the SIPP to a different product and provider that was more suitable for her. But I'm satisfied that Mrs A would always have taken a pension following the recommendation from SPW. She just would likely have taken a different product / invested differently. To do this, she'd have always had to take advice and to pay for this. As I've said the calculation that I think SPW should undertake accounts for advice fees (initial and ongoing) as they were deducted from the account directly. And so, the calculation will compensate for these if a loss has been incurred. So, to require SPW to also pay for future advice would put Mrs A in a position of having a pension without having paid for any advice, which again I don't think is fair and reasonable. I think the fair solution, to bring finality to the matter, is for SPW to account for the fees it charged for unsuitable advice. Which again, I'm satisfied the recommended calculation will do.*

*Lastly, I note that the Investigator recommended that SPW make a payment to Mrs A for distress and inconvenience. But I don't agree that it needs to do so here. Our role is not to fine or punish a business. And just because an error has occurred does not mean that compensation will always be due, or that a payment in respect of distress and inconvenience is appropriate.*

*The interactions with SPW were largely carried out by Mr Q. Mrs A didn't have regular interactions with them. And while I know she has expressed unhappiness with the performance of her pension and ISA, I haven't seen anything that supports that having the SIPP, and how it was invested, have caused her ongoing distress. In fact, although I think the recommendation to invest at the aggressive risk level was unsuitable, Mrs A doesn't appear to have been unhappy with this. So, I don't think the unsuitable recommendation has caused her any ongoing distress and inconvenience. And it follows that I don't think it is fair to require SPW to make a payment for this.*

## **Responses to my provisional decision**

I gave both parties an opportunity to make further comments or send further information before I reached my final decision.

Neither Mrs A or SPW provided any further comments or evidence for me to consider.

## **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.

Having done so, and as neither party has provided anything further for me to consider, I see no reason to depart from my provisional findings. So, for the reasons explained above, I'm satisfied that SPW provided Mrs A with the information it was required to about the ongoing

advice service and has provided the agreed level of service. I'm also satisfied that its advice regarding the ISA opened in Mrs A's name was suitable. But I think, and SPW has agreed, its advice in respect of opening a SIPP was unsuitable. So, I think it should carry out a calculation to establish if this advice has caused Mrs A to incur a loss and, if it has, should compensate her for that loss.

## Putting things right

### Fair compensation

My aim is that Mrs A should be put as closely as possible into the position she would probably now be in if she had been given suitable advice.

I take the view that Mrs A would still have opened a pension following the advice from SPW. But I think she'd have invested differently. It's not possible to say *precisely* what she would have done differently. But I'm satisfied that what I've set out below is fair and reasonable given Mrs A's circumstances and objectives when she invested.

### What must SPW do?

To compensate Mrs A fairly, SPW must:

- Compare the performance of Mrs A's investment with that of the benchmark shown below. If the actual value is greater than the fair value, no compensation is payable.

If the fair value is greater than the actual value, there is a loss and compensation is payable.

- SPW should also add any interest set out below to the compensation payable.
- SPW should pay into Mrs A'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 SPW is unable to pay the total amount into Mrs A's pension plan, it should pay that amount direct to her. But 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 isn't a payment of tax to HMRC, so Mrs A won't be able to reclaim any of the reduction after compensation is paid.
- The *notional* allowance should be calculated using Mrs A's actual or expected marginal rate of tax at her selected retirement age.
- As I explained in my provisional findings – to which there were no objections – I think it is reasonable to assume based on the available information that Mrs A is likely to be a basic rate taxpayer at the selected retirement age. So, the reduction would equal the current basic rate of tax. However, if Mrs A would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation.

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

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Firm F SIPP PDPS Adventurous	Still exists and liquid	Average rate from fixed rate bonds	Date of investment	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance)

### ***Actual value***

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

### ***Fair value***

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, SPW 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.

### **Why is this remedy suitable?**

I've decided on this method of compensation because:

- Mrs A wanted to achieve a reasonable return without risking any of her capital.
- The average rate for the fixed rate bonds would be a fair measure given Mrs A's circumstances and objectives. It doesn't mean that Mrs A would have invested only in a fixed rate bond. It's the sort of investment return a consumer could have obtained with little risk to the capital.

SPW should provide details of its calculation to Mrs A in a clear, simple format.

### **My final decision**

For the reasons I've explained I uphold this complaint in part. To put matters right, Scottish Widows Schroder Personal Wealth Limited should carry out the steps outlined in the 'Putting Things Right' section of my decision, set out above

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 22 July 2025.

Ben Stoker  
**Ombudsman**