

The complaint

Mrs H has complained about the advice she received from St James's Wealth Management Plc ('SJPWM') to take out a Flexible Protection Plan. She says it is costly and inappropriate for her needs. She only needed such cover when her children were younger, the active management of the policy was sub-standard and led to poor performance, the charges were unreasonable and SJPWM had failed to follow its own complaint procedure.

To put the matter right Mrs H would like compensation for the amount paid over and above what would otherwise have been paid for term assurance on the same basis and for SJPWM to provide term assurance on a whole of life basis without further health checks.

Mrs H is represented by her husband in bringing her complaint but for ease of reading I will refer to 'Mrs H' throughout my decision.

What happened

In November 1999 Mrs H was advised by SJPWM to take a Flexible Protection Plan to provide cover in the event of her death. In December 1999, Critical illness Cover ('CIC') was also included. At the outset, the monthly cost was £28.88 for a benefit of £67,904 for an initial 15-year term but the premiums increased over time to £166.11 and the benefit to £168,195 in 2022.

Further to a review with her current financial adviser Mrs H was told she was over insured and she thought the policy from SJPWM was costly and inappropriate. Mrs H had a similar product taken with a different provider around the same time where the premiums were half what she paid SJPWM. So, she raised a complaint with SJPWM in October 2022/March 2023.

In its response of 30 March 2023 to the complaint SJPWM said;

- It had to ensure the policy was suitable at the time of the advice but didn't have an ongoing duty of care to ensure it remained suitable. And in March 2015 Mrs H had asked for no contact to be made.
- It didn't offer independent advice so couldn't confirm the plan was the most suitable on the market.
- The plan was taken to provide protection benefits in the event of Mrs H's death or if diagnosed with a critical illness. Any investment content paid for the benefits provided and Mrs H was warned it had no cash in value.
- The premium increased by indexation each year at a rate of 5% as did the cover. Reviews took place every five years. The first review was in 2009 when the cover was slightly reduced rather than increase the premium. The plan was reviewed again in 2014, and 2019. A further review would take place at the end of 2024 when a large increase in premiums was anticipated in line with Mrs H's age.
- Total charges and premiums up until the end of 2022 were both just under £21,000. 73% of charges were for the cost of the cover and 27% for SJPWM's costs.

- The policy was explained at the point of sale as were the risk factors.
- It couldn't comment on the costs of the policy Mrs H had with another provider and the performance of its policy wouldn't mirror the FTSE 100.
- The plan was sold on a maximum cover basis which meant Mrs H was paying the lowest possible premium to cover her chosen benefits until the end of term in 2024 which meant the premium would only support the life and CIC and there was no increase in the underlying investment value. The alternative would have been standard cover where the costs are higher at the outset to build up the underlying investment value.
- The plan was suitable for Mrs H's stated circumstances and objectives.
- It offered £250 for the time taken to provide a response to the complaint.

In response to further correspondence SJPWM wrote to Mrs H again on 22 September 2023;

- It couldn't find evidence Mrs H had been told of fund changes, but its policy had always been to notify clients.
- It provided details of like for like comparison with fund analysis including risk, asset allocation and charges.
- It maintained the plan was suitable for Mrs H.
- It increased its offer to £500 because it failed to provide all documents in a Data Subject Access Request ('DSAR') request and the delay in responding to the additional questions.

Unhappy with the outcome Mrs H brought her complaint to the Financial Ombudsman Service, but SJPWM thought the complaint had been made too late under the rules that applied.

Our investigator concluded there were aspects of the complaint this service could consider which included the active management of the policy that led to poor performance, changes made to the funds without consultation with Mrs H, SJPWM not following its own complaint procedure and SJPWM's failure to provide information following a subject access request. And SJPWM agreed to this service looking at the suitability of the sale.

Our investigator who considered the merits of the complaint didn't think SJPWM needed to do anything more. She said;

- Looking at Mrs H's circumstances at the time of the sale she was satisfied the plan was affordable.
- The funds invested weren't unsuitable considering Mrs H's 'reasonably speculative' attitude to risk.
- She only had information from a month before the sale, but it was unlikely Mrs H's circumstances had considerably changed. SJPWM had considered Mrs H's investment objective and financial circumstances, and the policy was suitable as it provided valuable protection.
- It wasn't possible to compare the premiums paid with a policy taken out by another provider so she couldn't comment.
- There was diversification in the underlying investment, so she was persuaded it was more than likely Mrs H was invested in line with her attitude to risk.

- Despite the lack of correspondence from the time the underlying funds were changed, SJPWM was do so as it saw fit and she couldn't be sure if Mrs H would have taken any different action.
- This service couldn't consider performance and SJPWM hadn't given any guarantees about that.
- SJPWM had offered £500 for the delays in responding to the complaint, the provision of information and not answering Mrs H's queries. Overall, she wasn't persuaded the policy was unsuitable and the offer of compensation was fair.

Mrs H asked for the complaint to be considered by an ombudsman as her complaint remained the same and which had not been adequately addressed.

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.

After doing so, I agree with the conclusion reached by the investigator and broadly for the same reasons. I'll explain why.

I'm aware I've set out the background to this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every point made by the parties involved. No discourtesy is intended by this. Instead, I've focused on what I find are the key issues here. Our rules allow me to take this approach. It simply reflects the informal nature of our service as a free alternative to the courts. If there's something I haven't mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

We don't have all the information or documents from the time of the sale. I don't find this surprising as businesses aren't obliged to keep paperwork indefinitely. But when the information or evidence presented to me is contradictory or missing, I have to base my decision on the balance of probabilities and what I consider most likely happened.

My understanding of the Flexible Protection Plan is that it was sold on a maximum cover basis which meant Mrs H was paying the lowest possible premium to cover her chosen benefits until the end of term. This type of plan is designed so that the premium covers the cost of life and CIC. The premium increases came about from 5% indexation on the plan which gets increasingly expensive as the policyholder ages. The primary reason for the plan was to provide protection for Mrs H. It was not designed to be an investment vehicle which would provide an investment return to Mrs H.

Mrs H's circumstances and investment objectives

I've considered Mrs H's circumstances from around the time the advice was given and as recorded in SJPWM's Fact Find document completed on 9 November 1999. It records;

- Mrs H was aged 35 years and married.
- She was a housewife with three children under the age of eight.
- Mr H was employed with an annual income of £80,000 and the household monthly disposable income was £2,833
- The joint residence was valued at £190,000 with a mortgage of £134,000 which was protected by a joint endowment/CIC policy with a sum assured of £130,000.

- Mr H had a CIC cover of £50,000.

For Mrs H a flexible Protection Plan with a life benefit of £200,000 was recommended costing £28.88 per month.

The reason for the recommendation was given as being;

'Under current circumstances [Mrs H] is under insured & her family would suffer financially if she died prematurely. I have recommended a flexible protection plan because it suited her needs & will provide the security and peace of mind she needs.'

The adviser wrote to Mr and Mrs H the next day and with regard to Mrs H he said;

'I have recommended the [predecessor business] Flexible Protection Plan. Should you die unexpectedly, it would be reassuring for your family to know they will receive a cash sum, which will help them cope financially. This plan will provide that for your family.

The cover elected under this Plan is £200,000 and we agreed that it would increase by 5% pa. The initial contribution is £28.88 per month. You have stated that you are happy with this figure and that it is affordable...

The Key Features Booklet and the Illustration, which we discussed at our meeting, contain a full explanation of the Plan. These were given to you for your information.'

An application form for the plan was completed on the day of the meeting. It was for the recommended life cover of £200,000 costing £28.88 per month and the premiums were to be split equally between four funds – St James's Place Managed, M&G Managed, Cazenove Managed and Schroder Managed.

However, this changed at some unknown point as the Flexible Protection Plan document 'prepared' on 9 December 1999 shows a benefit of £67,904 for life and now included critical illness cover. The monthly cost remained the same. An acceptance letter was sent to Mrs H on 15 December 1999.

We asked for an updated fact find or suitability letter for the change in the benefits of the policy taken between November and December 1999, but SJPWM didn't provide anything. However, I don't think it's unreasonable for me to use the documents produced during and after the 9 November 1999 meeting as I've no reason to think there were any significant changes to Mrs H's circumstances over that month.

Mrs H's attitude to risk

As mentioned, four collective investments were to be held which were exposed to investment risk which I would have expected to have been assessed during the meeting with Mr and Mrs H.

For this sale, the suitability letter recorded Mrs H's attitude to risk as being 'reasonably speculative and is reflected in the funds you have chosen to invest in.' I know Mrs H disagrees with this and I have considered how this risk rating came about and how SJPWM made Mrs H aware of the varying levels of risk implicit in different investments, particularly as there's nothing to suggest that Mrs H was anything other than new to investing. SJPWM needs to demonstrate that it gave suitable advice taking into account Mrs H's circumstances, understanding and knowledge after ascertaining her attitude to risk.

But SJPWM hasn't been able to provide anything from the time of the sale to show how Mrs H's attitude to risk was assessed. However, whilst we don't have a copy of an assessment or questionnaire from around the time the recommendation was made, I think this is more likely to be because of the passage of time rather than SJPWM's failure to determine SJPWM's attitude to risk. Even though the reference in the letter is to a speculative attitude to risk this satisfies me it's likely SJPWM made some sort of an assessment here. And Mrs H went on to accept the recommendation, so I'm not persuaded she had concerns about her rating at the time.

Despite that being the case my understanding is that 'speculative' is SJPWM's highest risk rating and while there's insufficient evidence for me to know for sure what was discussed, I would find it unusual for a novice investor to take such a level of risk for this type of product, so I have gone on to consider what Mrs H was actually invested into further on in my decision.

The advice – was it suitable

The fact find and suitability letter suggest that Mrs H was anxious to financially protect her family in the event of her death or illness and the plan provided this for her. While there were other options available to Mrs H at the time, my role isn't to retrospectively consider other alternative products. My role is to consider whether the advice given at the time was suitable for Mrs H.

The type of plan taken – on a maximum basis – is cheaper at the outset but becomes more expensive as the policyholder ages. And bearing in mind that Mrs H was initially advised to just take life cover, which was later amended to include CIC, this persuades me there was some sort of subsequent conversation about amending the policy in order to widen the level of cover offered – to include CIC – but for the monthly cost to remain the same. While the fact find indicates the policy was affordable for the household, this suggests to me that Mrs H wanted to keep the costs of protection to a minimum.

And while there is no evidence the illustration and suitability letter provided did explain maximum, intermediate or standard cover, this was explained in the terms and conditions. Mrs H was sent annual reminders about the automatic indexation of the policy without the need for any additional health checks and confirmation the cost would increase with age. The life cover benefit was to increase by 5% and the premiums would also increase by a percentage. This was detailed in the suitability letter, so I'm satisfied Mrs H was made aware of this but was happy to continue.

Mrs H has complained she only needed cover until her children became independent. But as I understand it Mrs H could have cancelled the plan at any time, and I haven't seen she attempted to do so and note she renewed the policy after the initial 15 year term. Overall, I haven't been given anything to show the plan wasn't suitable for Mrs H as it provided the protection she was looking for and it was affordable for her.

The underlying investments and changes

At the time the policy was taken out the funds invested into, as chosen by the financial adviser, were split equally between;

St James's Place Managed
M&G Managed
Cazenove Managed
Schroder Managed

These funds were changed over time because of name changes or fund splits but except for where one of the funds – the M&G Managed Fund – was split the funds' unique International Securities Identification Number ('ISIN') all remained the same. And my understanding is that if the ISIN remains the same, it indicates that the underlying investment strategy and the securities held by the fund have not changed. So, there's nothing to suggest the investments became unsuitable for Mrs H because of the changes.

But Mrs H has complained about these changes, that she wasn't advised of them and would have chosen alternative funds. SJPWM has explained that it was, and still is, its policy to write to investors at the time of any changes but it hasn't been able to provide any evidence that it actually did correspond with Mrs H around the times of those changes.

However, the terms of the policy makes clear that SJPWM had authority to make changes to the chosen funds;

'Funds

We reserve the right to introduce further Funds or to substitute, close or merge existing Funds at any time. In addition, we may substitute, combine or divide Units in any Funds at any time'.

I can't know what, if anything, Mrs H would have done differently if she didn't agree with the changes. So even if SJPWM didn't inform Mrs H of the changes – which it has told us is and was its policy – I can't agree that it has done anything wrong here as it acted within the policy terms.

Performance of the investments

The Flexible Protection Plan was primarily set up for life and CIC protection rather than for the performance benefits of the funds invested into. I've checked to see if this was explained to Mrs H at the outset. I note the 'Flexible Protection Plan' document said;

'WARNING – this Plan has no cash-in value at any time.'

So, I'm satisfied Mrs H was made aware at the outset that the policy wasn't an investment vehicle as such as the monthly cost was mostly used to provide the cover and any premium invested was done so for the potential of capital growth so the policy could be maintained over the longer term. The lower initial premium – than for other types of policy – was invested in investment funds where the returns helped cover the cost of the benefit. If the investments didn't perform as expected, a policyholder may experience increased premiums or reduced cover.

Mrs H has complained about the performance of the underlying investments. While I can't consider performance in and of itself, I can consider whether the investments were unsuitable or whether they've been mismanaged.

Provided the premiums were invested in line with what was agreed – in this case identified as being for a 'reasonably speculative' level of risk in a range of collective investments – then it wouldn't be fair or reasonable for me to uphold the complaint on this point. While I don't have the key features documents for the funds from the time of the sale, I've reviewed the funds that are now held post name changes etc and from what I have seen it looks to me that the level of risk taken was lower than 'reasonably speculative'. And at a level of risk that in my view is more in line with what I would expect to see for a novice investor. There's nothing to show how this likely change in investment risk came about but there may have been further conversation about which documentation hasn't been provided.

But those funds did offer the opportunity for growth from a wide range of assets including equities, collective investments, fixed interest/bonds and cash which would be needed to sustain the investment pot to maintain the policy over the longer term. So, while I don't have all the point-of-sale documentation, I haven't seen anything to suggest that Mrs H was invested outside of the investment objective or a reasonable risk profile.

One of Mrs H's complaint points is that the investments haven't performed in line with the FTSE 100/sector average. The fact that the risk of underperformance of the investments may have materialised against a benchmark does not automatically mean that SJPWM or the fund managers did anything wrong as they were using their judgment as they were expected to do. And there's nothing to suggest SJPWM said the investments were to be measured against the benchmark of the FTSE 100/sector average or that the performance would be guaranteed. So, despite the plan not being an investment vehicle that offered a return to the investor, in the absence of any evidence that the investments were mismanaged – and the performance of the funds alone doesn't evidence this – I am unable to say that SJPWM has done anything wrong in the overall management of Mrs H's plan's investments.

Mrs H has said she took a similar product with a different provider around the same time and the premiums for that policy are half what she is paying SJPWM. It would be difficult for me to consider the comparative of the plan with another provider's product as I am only considering the plan that was sold to Mrs H and whether it worked as it should have done.

Customer Service

Mrs H has complained that SJPWM failed to follow its own – and the regulatory – complaint procedures. It's clear that SJPWM didn't respond to the complaint as quickly as it should have done nor to the follow up questions. But I note that SJPWM has already offered £250, which was then increased to £500 for the delays in responding to the complaint, the provision of information and not answering Mrs H's queries.

No doubt Mrs H must have been frustrated with the need to make the complaint and then for SJPWM's delayed responses and it not providing all the information requested. But I think £500 is a fair and reasonable offer for the distress and inconvenience caused and is in line with what I would award under similar circumstances.

I understand Mrs H has so far rejected the offer, so it is now for her to decide whether to accept it.

Taking all the above into account, and after consideration of the evidence presented to me, I'm satisfied the policy wasn't unsuitable for Mrs H. I'm also satisfied SJPWM was acting within the terms of the policy when the funds were changed and that the offer it has made in recognition of its failings when dealing with Mrs H's complaint is fair and reasonable.

It follows I don't uphold Mrs H's complaint. I appreciate Mrs H will be disappointed with the outcome to her complaint. It's clear she feels strongly about it, and I'd like to thank her for the time and effort she has spent in bringing it. But I hope I have been able to explain how and why I have reached my decision.

My final decision

For the reasons given, I don't uphold Mrs H's complaint about St James's Place Wealth Management Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or

reject my decision before 1 August 2025.

Catherine Langley
Ombudsman