

## **The complaint**

Mrs M complains that St. James's Place Wealth Management Plc ('SJP') gave her unsuitable advice to open a Retirement Account with it in 2018, and then to open an Individual Savings Account ('ISA') with it in 2022. Mrs M also explained that she paid SJP for ongoing advice and she didn't think she had always received that.

## **What happened**

Prior to Mrs M's divorce, her husband had a pension product with SJP. As part of the divorce settlement, a court put in place a pension sharing order ('PSO') for that pension.

Mrs M received advice from SJP in January 2018 about what to do with the funds assigned to her by the PSO. It carried out a fact-find to determine Mrs M's circumstances and it recommended that a transfer of the PSO funds to an SJP Retirement Account (a personal pension product) would be suitable for her. Mrs M accepted the recommendation and around £450,000 was transferred to a new SJP Retirement Account.

SJP assessed Mrs M's attitude to risk as being medium. And the fund was invested in the SJP Managed Fund Portfolio, which was in line with its recommendation.

As part of the service that SJP agreed with Mrs M it gave her a commitment to provide personal face to face financial advice, the opportunity to review her financial affairs regularly, and to help her manage her investments. And it set out its charging structure for Mrs M.

In March 2018, SJP met with Mrs M to discuss her requirement to take £30,000 in tax free cash.

In January 2019 Mrs M met with SJP for a review meeting. This was followed up with a review document in March 2019 where it was agreed to switch to a defensive fund choice as Mrs M was concerned about losses.

In June 2020 SJP show evidence of corresponding with Mrs M to confirm a switch of funds.

In December 2021 SJP contacted Mrs M again to confirm another fund switch.

In March 2022, Mrs M met with SJP again regarding advice on how to invest inheritance, around £160,000, that Mrs M received from her mother. It updated Mrs M's circumstances and recommended that Mrs M invest the maximum permitted amount into an SJP stocks and shares ISA, and the remainder in its Unit Trust Feeder account that would then automatically top up the ISA each tax year. In this report SJP updated Mrs M with the performance of her Retirement Account. It assessed Mrs M's attitude to risk as medium risk and the newly invested funds were invested in its Managed Funds Portfolio in line with that.

In December 2022 SJP provided Mrs M with an annual review follow up letter.

On 24 April 2023 Mrs M complained to SJP about the transaction costs that had been applied to her Retirement Account. On 16 June 2023 SJP responded to that complaint and didn't uphold it. SJP's response gave referral rights to our service and didn't consent to our

considering this complaint if referred outside of 6 months.

In August 2023 Mrs M made a further complaint via a legal representative. I summarise the particulars of Mrs M's complaint as follows: Mrs M should not have been advised to invest her money so soon after going through major changes in her circumstances. Mrs M was advised to take too much risk with her money. SJP failed to provide her with the ongoing reviews which she paid for.

SJP responded on 29 December 2023 to explain that it didn't agree that Mrs M's advice to open a Retirement Account, and then the ISA and related Unit Trust Feeder were unsuitable for Mrs M. It didn't agree that the timing of the advice was unsuitable. And it stated that Mrs M's daughter accompanied her to a number of meetings in 2018 and in 2022. SJP reviewed the contact it had with Mrs M and thought that it had conducted reviews for Mrs M in February 2019, December 2021 and then contact and support in January, February, March and September 2022. It could not evidence that it had provided Mrs M with a review in 2020 so offered to refund the ongoing advice charge that was paid in 2020, plus interest on that. It calculated that to be £2,522.70 and also offered to pay Mrs M £150 for any trouble and upset that caused.

Mrs M didn't accept SJP's answer and her legal representative referred her complaint to our service on 26 June 2024. Our investigator looked into what happened and didn't think that the advice SJP gave Mrs M in 2018 and then 2022 was unsuitable. He looked at the ongoing advice that SJP had provided and reached the opinion that SJP should refund ongoing advice charges where he identified reviews were missed.

Mrs M did not accept our investigator's view and the case was referred for an ombudsman's decision. The case was passed to me and I issued a provisional decision to explain that I didn't think the advice Mrs M had been given was unsuitable for her circumstances and objectives. I reviewed the ongoing service that she had been provided and was of the opinion that Mrs M had not received any annual review of her pension in 2020 in spite of having paid for that. So, like SJP concluded in its response to the complaint, I thought it should refund those fees. I thought its offer was broadly fair, but that interest should be paid up until the date of my decision.

SJP offered no further arguments or evidence. Mrs M disagreed with my provisional decision, although offered no further evidence or any new arguments. Because Mrs M disagreed with the fairness of my provisional decision, I have considered the case a final time and am issuing a final decision.

### **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 considered the circumstances again, my final decision is the same as my provisional decision. I set out again my reasons why I've decided that Mrs M's complaint is only upheld in part.

Mrs M's representative set out a number of complaint points stretching over the full extent of Mrs M's client relationship with SJP. For clarity I will address these issues separately as follows. But first I will explain that our service cannot consider the issues that Mrs M complained to SJP about in April 2023.

For the same reason that our investigator already explained, Mrs M's legal representative referred the issues in Mrs M's complaint of April 2023 too late under the rules that govern

our service – which are set out in the Dispute Resolution (DISP) rules in the FCA's Handbook. The relevant rule here is DISP 2.8.2R. It means that our service cannot consider a complaint brought more than six months after a respondent's final response. Unless the failure to refer in time was a result of exceptional circumstances.

SJP gave Mrs M its final response to that complaint on 16 June 2023. So she had until 16 December 2023 to refer the issue of the transactional charges to our service. Mrs M did not refer her complaint to our service until June 2024. Which is too late for us to help with that matter unless the failure was because of exceptional circumstances. But it wasn't. Mrs M engaged the services of legal representatives prior to August 2023 when it referred additional complaints to SJP. So I see no reason why Mrs M or her legal representative could not equally have referred the first matter to our service within the allowed time.

It means I will only be considering the issues raised in the complaint that SJP addressed in its final response of 29 December 2023.

### *Suitability of pension advice*

SJP were not advising Mrs M about a pension switch in the strictest sense. Mrs M did not currently have a pension with it, but had a need of a suitable product to be able to receive the PSO contribution.

Mrs M had chosen SJP because of an existing relationship with the SJP partner, and the fact that it had historically provided advice to her husband. The SJP partner was limited to giving advice on SJP products. Which I think was clear.

The Retirement Account that was recommended involved the transfer of funds from a similar Retirement Account that Mrs M's husband already held. I don't think that it was therefore a recommendation that caused the existing fee structure for the previous pension to change. The costs were set out at the start and were accepted by Mrs M, which they needed to be.

SJP showed that it considered the alternative of a stakeholder pension, which may have had lower overall fees, but dismissed it because it wouldn't allow for ongoing advice to be paid for from the pension fund. Which it said was one of Mrs M's objectives. Given the size of the pension fund that was being considered, the fact that Mrs M was of an age where she could access benefits from her pension, and her relative lack of investment experience, I think this was likely a genuine and reasonable objective.

SJP appear to have reached an agreement with Mrs M, through discussion, that she would be treated as having a medium attitude to investment risk. The suitability document recognised that Mrs M had limited investment experience and that she had a relatively short term – 5 years – until taking benefits from this pension fund. It explained that the short investment term would ordinarily mean that only investments in the 'low risk' category would be appropriate. But it recognised that Mrs M was more comfortable with a medium risk investment approach given her objective to maximise growth and a wish that her fund should at least keep pace with inflation until the decision to take flexible benefits in five years.

Overall, I am persuaded that SJP explained the risk ratings it used as it refers to having discussed that with Mrs M and provided her with a document explaining that. A person's attitude to investment risk is a subjective thing. I don't think it was unreasonable to discuss this with Mrs M and agree it with her, making sure that she understood and was comfortable with the choice. Given the documentation, I think that SJP broadly did this, and at that stage medium risk was appropriate for Mrs M.

A certain amount of investment loss was an unavoidable consequence of having a pension

invested in a way to achieve growth. Avoiding any risk by placing this fund in a deposit account would carry a different risk because it would be highly likely that the fund would not keep pace with inflation. And I don't think that was Mrs M's objective or in her best interests. But I have also considered whether Mrs M had the capacity for loss to make investing in line with her attitude to risk suitable. And I think that she did. This may have been her only pension fund, but it was a reasonable sized fund. Mrs M owned her home outright and had other accessible savings around £20,000. SJP carried out an income and expenditure comparison for Mrs M and found her monthly income (estimated to be over £6,000) to be significantly in excess of her monthly expenditure (around £1,250). Which meant that Mrs M had the ability to still make pension contributions over the remaining five years to her intended retirement age.

I have also considered whether it was unsuitable for SJP to be giving Mrs M a recommendation about the PSO given her circumstances at the time. But I am not persuaded by that argument. SJP understood her circumstances and documented her divorce as being made final in August 2017. And having issued a PSO the court would normally expect that to be acted on within a specified time. It was unavoidable that Mrs M would have to make a decision about what she would do with this PSO. Providing financial advice to help with that important decision was a fair and reasonable thing to do.

#### *Suitability of ISA advice*

In 2022 Mrs M received further advice from SJP about how to invest a sum of money that she had inherited. Mrs M wanted to be able to invest this money in a tax efficient way and to be able to achieve growth over the medium term. She had no immediate need to spend the money in order to meet expenditure needs. The use of an ISA for tax free investing was a suitable recommendation. The amount of money available could not be placed into an ISA in a single tax year. So the recommendation of the Unit Trust Feeder account was a suitable means to ensure that funds were fed into the ISA over time.

SJP went through a similar process to verify that Mrs M's attitude to risk remained unchanged, at Medium risk. Mrs M's financial circumstances remained largely as they were in 2018. Her income was comparable. So, for the reasons I set out above, I think that Mrs M had the capacity for loss to justify investing in line with her agreed attitude to risk.

I think that Mrs M approached SJP for advice on what to do with the money she had inherited from her mother. This was understandable as she had an existing relationship with her SJP adviser. I think that her adviser understood her circumstances, and I don't think that SJP should have avoided giving advice due to any understanding of Mrs M being vulnerable. It understood the source of the funds were coming from inheritance being settled following the death of her mother in 2019. I don't doubt this was a difficult time for Mrs M, but I don't think that declining to give a personal recommendation due to the difficulty of bereavement would have been more in Mrs M's best interests.

Overall, I can find no reason to consider that SJP's recommendation on how to invest the £160,000 was unsuitable.

#### *Did SJP provide the ongoing advice that Mrs M was paying for?*

There seems to be an agreement that SJP ought to have been providing Mrs M with regular reviews of her financial arrangements to ensure that the investment choices remained suitable to her circumstances. The charges were being taken throughout the year so I think that there should have been reviews on at least an annual basis. And SJP's literature said that Mrs M would receive an annual valuation.

Mrs M's Retirement Account started in January 2018. Ongoing advice charges were being taken from the fund throughout the year to pay for the service SJP would provide. So I would expect SJP to be offering an annual review of the performance and suitability of that account close to January each subsequent year. And it should have some form of process in place to ensure that it was done close to that time. I will go on to consider each year in turn to determine whether SJP provided a reasonable service for the fees it charged Mrs M.

## 2018

There was clearly an annual review in early 2019. This appears to have been in a meeting with Mrs M in January followed up with a written review in March. SJP additionally provided ad hoc advice about accessing tax free cash in 2018 so I am satisfied that it delivered a service as agreed in the first year.

## 2019

I think that it follows that Mrs M should have been provided her next annual review around January 2020. But SJP have provided no evidence that happened, even though it had taken a full year of fees from Mrs M's retirement account since January 2019. The closest review that SJP have evidenced was in June 2020. Which was around five months late. I think it's fair to treat this as the late review that had been paid for from the monthly fee charges taken from February 2019 to January 2020. It therefore follows that the fees that Mrs M paid in the subsequent year would have been for an additional review.

## 2020

Given that the June 2020 review was most likely the 2019 review done late, the annual review for the 2020 period would have been due around January 2021. But SJP provide no evidence of this. It means that, for the fees taken through February 2019 until January 2021 Mrs M only received one annual review. I consider that means that the annual review that Mrs M paid for in her fees from February 2020 to January 2021 was never provided. So it would be fair for SJP to refund these fees.

## 2021

There was no annual review done at the January 2021 anniversary of the account as I have said. Which has put the service provided out of kilter. The annual review for this year though would have been due around January 2022 by the original timeline, even though that would inevitably be a gap of more than a year. SJP have not provided a document that persuades me that Mrs M was provided with a documented review. I have considered what it has shared, which is a brief email that the SJP partner sent Mrs M on 13 December 2021. It convinces me that Mrs M had been in contact with SJP and that it had moved 2 funds that were not performing well. It promised to meet in January. I don't think it's reasonable for SJP to suggest that represents a thorough review of Mrs M's fund performance and circumstances. But I think that there was an annual review in March 2022 where Mrs M was provided a review of her Retirement Account at the same time that she also received the recommendation to start the SJP ISA and Feeder Account. Whilst this was late, I think it's fair and reasonable to consider this to be close enough to meet its agreed service. Particularly in light of the fact that there was a further review in 2022 that I will refer to below.

## 2022

In treating the March 2022 review as being part of the service paid for in the fees in 2021 it follows that SJP should have provided a separate review for 2022. And I think that it did. In this year there was an annual review that was brought forward due to Mrs M being in contact

with SJP on 6 September 2022 to discuss transferring a separate cash ISA that she held to the SJP ISA. That was then documented in a suitability report on 7 December 2022. Which, I think provided Mrs M with a review of both her Retirement Account and ISA. So I think that SJP provided Mrs M with an appropriate service in this year. It was not unreasonable to combine the review with the additional financial advice.

### *Summary*

For the above reasons I think that the advice to open the Retirement Account in 2018 and the ISA and Feeder Account in 2022 were most likely suitable for Mrs M's circumstances and objectives.

I am not as satisfied that SJP always provided the service that it agreed to. I have found its records of the reviews to be patchy. I don't think its records make it clear which review or correspondence correlated with the fees being taken in a particular year. I have set out my timeline above and I find there was not an annual review that I can fairly attribute to the period of February 2020 until January 2021, where ongoing advice charges were still taken. I think this is a similar conclusion to that reached by SJP when it first investigated this matter although for different reasons.

### **Putting things right**

Given that I have reached an outcome that is very close to the one that SJP reached in its complaint response, I have considered whether the way that SJP proposed to put things right was fair and reasonable. And, on the whole, I think it was.

SJP offered to refund fees for 2020 which I think was a fair way to put things right. So it should now do that in the following way.

If those fees had remained in Mrs M's retirement account, they would have been subject to the same investment returns that her fund experienced. Instead of calculating that, SJP instead offered to add 8% simple interest to the refunded fees. Whilst this wouldn't necessarily have put Mrs M into the same position she would have been in, I think it is a reasonable alternative way to correct things that does not disadvantage Mrs M. So SJP should honour that offer by adding 8% per year simple interest to the refunded charges from the point that they were taken until the date of my final decision.

SJP additionally offered Mrs M £150 for the distress and inconvenience that its error caused. I think that this was also fair where it identified that Mrs M was inconvenienced by missing the review at the time she expected it. I do not think this should be increased because I do not think that the mistake caused a considerable level of distress or inconvenience. I say that because Mrs M always had the option to contact SJP and I have seen evidence that, where she did that, she received engaged responses.

SJP offered to pay its compensation directly to Mrs M. Whilst I would normally consider it fair for compensation to be paid back into Mrs M's pension, I think that SJP's offer, overall, was a fair and reasonable attempt to put things right. So, SJP should pay this compensation (including the added interest up to the date of my decision) to Mrs M in the way it offered to do.

If payment of compensation is not made within 28 days of SJP receiving Mrs M's acceptance of my final decision, interest must be added to the compensation at the rate of 8% per year simple from the date of my final decision to the date of payment.

Income tax may be payable on any interest paid. If SJP deducts income tax from the

interest, it should tell Mrs M how much has been taken off. SJP should give Mrs M a tax deduction certificate in respect of interest if she asks for one, so she can reclaim the tax on interest from HMRC if appropriate.

### **My final decision**

For the above reasons I am upholding Mrs M's complaint in part, and directing St. James's Place Wealth Management Plc to put things right as I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 29 July 2025.

Gary Lane  
**Ombudsman**