

The complaint

Ms M complains that St. James's Place Wealth Management Plc (SJP) gave her unsuitable advice about her pension withdrawals, and that this led to some of her state benefits being reduced. She holds SJP responsible for that loss.

Ms M is represented in her complaint. But I'll only refer to her in my decision.

What happened

Ms M was referred to SJP through her solicitor for advice on what to do with the proceeds of a Pension Sharing Order (PSO).

On 8 February 2018, Ms M went to meet SJP to explore her options. The same day, SJP completed a fact find to record her circumstances and objectives. The document noted she was aged 54, divorced and had no financial dependents. It said that Ms M was medically retired and received £5,500 Employment Support Allowance (ESA) and £3,000 Disability Living Allowance (DLA). The fact find also noted that Ms M: *"gets discounted bills due to her medical conditions"*. Ms M's expenditure totalled £600 each month and she held an emergency fund of £5,000 in a cash account.

The fact find document stated that Ms M's objectives were to receive advice on the investment of the proceeds of the PSO, which would give her around £127,500 in pension savings. It recorded that Ms M didn't need access to the pension funds until age 67. And noted that she had little experience in investing. It said an Attitude to Risk (ATR) assessment had recorded that she was a lower medium risk investor.

The fact find also recorded that Ms M had no debts and lived in her own home, mortgage-free. It said the property was worth £65K. It also said she had no other pensions.

SJP had a second meeting with Ms M on 8 March 2018 when it further discussed risk. I understand that Ms M then agreed that the funds from the PSO would move to SJP once her divorce had gone through.

On 21 September 2018, Ms M met with SJP again. She told it that her divorce was about to complete and that she wanted to go ahead with the SJP transfer.

On 24 September 2018, SJP produced a suitability report documenting its recommendation for Ms M to invest the proceeds of the PSO into an SJP Retirement Account. The report explained the reasons for the recommendation. It said these were to allow Ms M to accumulate future pension benefits and to allow access to the funds at her state pension age of 67. SJP also recommended the SJP approach to investment management as Ms M didn't have the time or expertise to manage the funds herself.

On 3 December 2018, Ms M emailed SJP to confirm she received ESA and DLA. She said these were means-tested benefits. And that soon after that, she sent a further email the same day to confirm she also received: *"help with her rent and council tax"*. Ms M said her SJP adviser acknowledged these emails the same day.

On 12 December 2018 and 5 January 2019, SJP called Ms M to update her on the pension transfer. I understand that on 4 February 2019, the money from that PSO was transferred into a retirement account with SJP. £126,840 was transferred in.

SJP then met with Ms M on 11 February 2019 to discuss her income requirements, which had changed due to a change to her financial circumstances. And to discuss her retirement goals and her needs and objectives for income.

SJP updated its fact find on 11 February 2019. It recorded that Ms M no longer received maintenance payments of £200 each month from her ex-husband. This income hadn't been noted during the 2018 fact find. The fact find recorded that the removal of this income had led to an income shortfall of £192 each month. But that Ms M had identified that she preferred to withdraw income of £350 each month from her pension funds to cover the identified shortfall and to provide extra income for unforeseen changes in expenditure. The fact find recorded that Ms M's monthly expenditure had increased to £900 each month. Ms M also asked to withdraw £5,000 to use towards home improvements.

The fact find recorded that Ms M received discounted bills due to her medical conditions. It also noted that she lived in her own home worth £65K, with no mortgage. And that she now held one pension with SJP that had a value of £126,886.

The fact find stated the following in the disclosure notes:

[Ms M] does not have a mortgage on her own home as this is owned outright by her.

...

mortgage planning discounted as [Ms M] owns her own home outright. She does not wish to re-mortgage and she has no intentions of moving out of the family home now or in the near future.

...

[Ms M] also wishes to receive £5000 of her TFC to be utilised towards home improvements. of which she hopes will improve her standard of living.

SJP issued a suitability report dated 13 February 2019, documenting its recommendation for Ms M to withdraw a tax-free lump sum of £5,000 and to take regular income of £350 gross each month. The introduction to the report stated the following:

In the meantime, if anything within this report is incorrect or you have any questions about its contents or any of the documents I have provided you with, please contact me using the details I have previously supplied you with.

The report also noted that Ms M wasn't concerned that her wish to take £350 each month from her pension would cause issues with her state benefits. It said:

You are not concerned about any income advised changing your Income Tax rate or reducing any of your tax allowances because the state benefits that you receive are not accountable to income tax as they are tax-free state benefits.

The report also noted that Ms M owned a property worth £65K.

On 6 October 2023, Ms M contacted Citizens Advice Bureau to assess her entitlement to benefits. At this point, it was noted that her income from her SJP pension and another

pension in payment hadn't been disclosed to the relevant council.

Ms M disclosed the pension income she received from one pension scheme on 6 October 2023 and the council then started a full review of Ms M's circumstances. It accessed the Department for Work and Pensions (DWP) system in order to verify Ms M's ongoing pension payments and then discovered that Ms M was in receipt of undeclared income of:

- £252.21 annual pension from 9 September 2019 to 14 April 2022 from a scheme I'll refer to as pension scheme L. Then slightly increased amounts in the next two tax years.
- £3,810 annual pension between 6 May 2019 and 5 April 2020 from SJP. Then an annual pension of £4,080 from 6 April 2021 onwards.

The council issued a letter dated 14 November 2023 which stated that, since Ms M's last application for housing benefit and council tax reduction, there'd been several changes to her income that it hadn't been made aware of. And as a result of adding Ms M's private pensions on to her claim from 6 May 2019, her housing benefit and council tax reduction entitlement had reduced.

The letter said that there'd been an overpayment of £9,777.06 in housing benefit between 13 May 2019 and 5 November 2023, which Ms M was liable for. But that as Ms M still qualified for some housing benefit, it would recover the overpayment from her ongoing entitlement at £12.75 each week.

The letter also said that the income changes it had recently become aware of also affected Ms M's entitlement to Council Tax Reduction. It said she should expect to receive new Council Tax bills from 2019 onwards which no longer included the entitlement she'd previously qualified for. This led to Ms M finding out she also had £3,144 of council tax arrears.

Ms M contacted her SJP adviser for help to deal with this situation. On 14 February 2024, he wrote to the council on her behalf disputing the decision. His letter stated that Ms M was entitled to low-income relief if her annual income was below £16,692. But this information wasn't correct.

Ms M's adviser told this service that when he'd helped Ms M, he'd made it clear that he wasn't a benefits or tax adviser. And that the appeal was outside of what he did. But that he would help her to print off an appeal letter that she dictated to him.

On 29 February 2024, the council wrote to Ms M to tell her that her appeal had been received too late. It therefore refused her request to review her appeal. But it said it would separately write to her to explain the situation further.

The council wrote a further letter the same day to Ms M to explain that the figure she'd quoted in her letter related to different Council Tax property bands than her property, so it didn't apply to her situation. It provided details of the correct weekly income thresholds that applied to Ms M's claims, as well as information about how her income was used in the calculation.

Ms M's representative told this service that her SJP adviser then proceeded to assist her to submit an appeal. Ms M said she understood that her adviser would represent her at the hearing of this appeal, but he had subsequently withdrawn his support. It said that no appeal had been made in respect of the housing benefit decision.

Ms M's adviser said that he'd explained to Ms M that there was a further appeals process she could consider, and that he had again helped with the printing of forms, but had stressed it wasn't something he would get involved in. He said Ms M had asked him to represent her in the tribunal, but he'd declined and advised her to speak again with Citizens advice.

On 7 May 2024, the council wrote to Ms M to arrange the details it needed for the subsequent virtual hearing.

On 24 July 2024, Ms M raised a complaint with SJP through her representative as she felt the advice it'd given about pension withdrawals was unsuitable. She felt it'd led to some of her benefits being reduced causing hardship and distress. She asked SJP to pay £9,777 and £3,144 to cover the benefit overpayment that was being reclaimed by the council. She also wanted compensation for the distress caused.

Ms M's appeal decision was issued on 23 August 2024. The appeal was denied and Ms M was only entitled to a lesser rate of Housing Benefit as her private pensions hadn't been included in the assessment of the original level of entitlement.

Ms M brought her complaint to this service on 12 December 2024, through her representative. It felt that SJP should clear the debts that Ms M had incurred by acting on its advice. And that it should compensate her for the distress caused by the impact of the advice and the subsequent conduct of her adviser.

While SJP acknowledged the complaint, and apologised for the time it was taking to complete its complaint review, it has yet to issue a final response to the complaint.

Ms M's adviser told this service that Ms M had only ever told him that she got help for the rent and council tax. And that she'd never told him the amounts of that help, or how it was done. He said she'd also never asked him if that help would be affected by her income withdrawals.

Ms M's adviser said he'd conducted a fact find based on the information Ms M had provided. And that he'd then advised accordingly. He also said he'd assisted where he could with the appeals process.

Our investigator didn't think the complaint should be upheld. She felt SJP had given Ms M suitable advice on her pension withdrawals. She noted that the 2018 fact find and suitability report had simply provided advice on investing the proceeds of a PSO. But that Ms M's objectives changed by the time of the 2018 fact find. So SJP had noted in its 11 February 2019 fact find that Ms M's income had reduced as maintenance payments of £200 each month had stopped. She therefore needed to cover an income shortfall alongside an additional monthly income she'd requested to allow for unexpected additional spending. She also wanted to withdraw a lump sum of £5,000 for home improvements.

Our investigator felt that SJP's recommendation within the suitability report dated 13 February 2019 specifically addressed Ms M's income shortfall. And that this meant that Ms M's objectives were met by the recommendation made by SJP. While she acknowledged that the 13 February 2019 suitability report had stated that Ms M's state benefits wouldn't be affected by the withdrawals, she felt this statement was technically accurate given both ESA and DLA aren't means tested.

Our investigator acknowledged that Ms M's Housing Benefit and Council Tax Reduction had been reduced. She said these benefits were assessed on the level of income Ms M received. But she felt the main reason for the level of overpayments that the council now wanted to reclaim was Ms M's failure to fully disclose the level of income she was receiving.

She therefore didn't think SJP was responsible for any loss.

Our investigator felt that SJP's recommendation for Ms M to start pension withdrawals was to address an income shortfall. She therefore felt that if SJP hadn't made that recommendation, Ms M would've needed to reduce her discretionary spending, which she didn't want to do. She therefore wasn't persuaded that SJP's recommendation would've been any different even if it had considered the impact of the withdrawals on the Housing Benefit and Council Tax Reduction. She also felt that SJP couldn't give advice on claiming state benefits. While she felt that SJP could've suggested Ms M sought advice from the council before accepting its recommendations, she didn't think its failure to do so was a sufficient reason to uphold this complaint.

Our investigator felt that Ms M ought to have been aware that both Housing Benefit and Council Tax Reduction were assessed on her level of income. She felt Ms M therefore should've realised that she needed to disclose all sources of income to the council. She said that the income Ms M had withdrawn from her SJP pension wasn't the only source of pension income that she'd failed to disclose. She also felt that Ms M may have failed to disclose her divorce maintenance payments. Our investigator felt it was Ms M's responsibility to report the changes in her level of income to the council at the time of any change. She said that if Ms M had reported the changes sooner, the level of overpayment either wouldn't exist or would've been a lot lower.

Ms M didn't agree with our investigator. She made the following points, through her representative:

- In 2018 she lived in rented accommodation, not her own home. She had housing costs.
- SJP had incorrectly advised Ms M when it'd stated that her state benefits wouldn't be affected by the withdrawals, as Housing Benefit and Council Tax Reduction are affected. She said SJP hadn't specified which benefits it was referring to when it said that state benefits wouldn't be affected. She said she'd relied on the information provided by SJP. And that SJP had never told her that it couldn't provide advice about her benefits, or to seek advice regarding the impact on her benefits from another organisation.
- SJP had failed to consider the impact of any reduction in state benefits on Ms M's income when calculating the amount of the pension withdrawals. This meant that the advice didn't cover the shortfall in her income, despite that being the objective. The advice was therefore unsuitable.
- Ms M couldn't reduce her discretionary spending, it wasn't that she didn't want to. SJP hadn't evidenced that it'd carried out a full financial assessment to support the claim that Ms M had the option to reduce her discretionary spending.
- Ms M said there would've been no benefits overpayment if SJP's advice had been correct. She said if SJP had made her aware of the potential impact on her benefits, she would've notified the relevant agencies.
- She felt that if the advice she needed fell outside of her adviser's expertise, he should've notified her and advised her to seek specialist advice about her benefits.

As agreement couldn't be reached, the complaint came to me for a review.

As there was conflicting evidence about Ms M's housing situation at the time of the advice, I

asked her representative to confirm whether or not Ms M had owned her own home in 2018 and 2019 during the fact find meetings. And if she didn't, why had she told SJP that she did.

Ms M's representative replied to say that Ms M had lived in her own property with her ex-husband before her divorce, but the property was never mortgage free. Ms M said she'd moved into rented accommodation in 2015. And that she'd never told SJP that she lived in her own home mortgage free. Ms M also said she had asked for a £5,000 lump sum for home improvements, which she used for changes to her rented property.

I also asked Ms M to confirm when she first started to receive maintenance payments from her ex-husband, and when these stopped. I noted that there was no record of Ms M having mentioned this income when the council reviewed her benefits.

Ms M said she received £160 each month from August 2017 to April 2018 from her ex-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.

Having done so, I can't fairly and reasonably uphold this complaint. I know this will disappoint Ms M. I'll explain the reasons for my decision.

The key question is whether the advice was suitable for Ms M. So I've first considered this point.

Was the 2018 and 2019 advice suitable?

I can't reasonably conclude that there were any issues with the 2018 advice. I say this because the evidence shows that Ms M approached SJP for advice on her PSO. The pension being shared couldn't be retained in her ex-husband's pension scheme, so she needed to set up her own pension. Based on the evidence provided, I'm satisfied that SJP carried out a fact find to establish Ms M's financial situation and her ATR. And that it then provided the advice she needed at that time.

I do however note that the evidence shows that during the 2018 fact find, SJP recorded that Ms M owned her own house, mortgage free. It also recorded that she had no other pensions. There's also no evidence that Ms M told SJP about the £160 she said her ex-husband had been paying her since 2017. But the fact find did record that Ms M received discounted bills.

Looking at the 2019 advice at the heart of this complaint, the evidence shows that Ms M emailed her adviser on 3 December 2018 to say she got help with rent and council tax. She didn't provide any further information. And although this email did suggest that Ms M didn't own her own home, the 2018 fact find had recorded that she did.

The 2019 fact find recorded that Ms M's circumstances had changed as she no longer received a monthly income from her ex-husband. But this fact find continued to record that Ms M owned outright a house worth £65K. It also noted that she wanted to withdraw a £5K lump sum from her pension for home improvements. The fact find also continued to record that Ms M had no other pensions.

While I acknowledge that Ms M says she didn't ever tell her SJP adviser that she owned her own home, I'm more persuaded that she did tell him that. I say this because of the number of times this is recorded in the fact finds from both 2018 and 2019. And because it was also

noted in the 2019 suitability report. The 13 February 2019 report stated that Ms M owned a property worth £65K.

As I noted earlier, this report documented SJP's recommendation for Ms M to withdraw a tax-free lump sum of £5,000 and to take regular income of £350 gross each month. The report clearly stated that Ms M should contact her adviser if anything was incorrect. The report also noted that Ms M wasn't concerned about the recommended income withdrawals changing the state benefits she received because they were tax-free.

Ms M said that SJP's advice had been incorrect here as her Housing Benefit and Council Tax Reduction were affected. But I'm not persuaded that she ever discussed these benefits in detail with SJP. The evidence shows that she simply told her adviser that she got help with rent and council tax. And the 2018 fact find recorded she received discounted bills. I'm therefore not persuaded that Ms M gave SJP sufficient detail about her Housing Benefit and Council Tax Reduction during the 2018 and 2019 fact finds for it to have been able to direct her to someone who could've helped her to understand how those benefits might be affected by her desired pension withdrawals.

There's no evidence that Ms M, on receiving this report, told SJP that she didn't own a house, or that she had other benefits which would be affected by the withdrawals. And while I acknowledge that Ms M emailed her adviser on 3 December 2018 to tell him she received help with her rent and council tax, the evidence shows that she also said she wasn't worried about the impact of the withdrawals on her benefits and that she owned a house. I'm therefore satisfied that SJP's advice was reasonable based on the information Ms M had told it. And I don't think it would be fair to expect the adviser to have known Ms M's actual situation unless she explained it.

I don't consider the adviser could've known that Ms M was receiving housing benefit as the evidence shows that Ms M told him she owned her own house. I'm also not persuaded that Ms M could've expected her adviser to have known about all of the state benefits she was receiving unless she told him about them. And I'm not persuaded that she was clear about what she was receiving.

I acknowledge that SJP failed to consider the impact of any reduction in Ms M's Housing Benefit and Council Tax Reduction when it provided her with her 2019 advice. I therefore understand why she considers that the advice then provided didn't cover the shortfall in her income, despite that being her objective. But I can't fairly hold SJP responsible for its advice being unsuitable in this regard. I say this because I'm not persuaded that Ms M provided sufficient detail about her "*discounted bills*" for it to have been able to incorporate those benefits into its advice. And because I'm satisfied that Ms M had repeatedly told her adviser that she had her own house, in which case she wouldn't have qualified for Housing Benefit. I can also see that Ms M didn't follow up with her adviser once he'd issued the February 2019 suitability report. I think if she had at that point told him she didn't own her own home, and that she received benefits which could be affected by her income withdrawals, the adviser would've reviewed his advice on that basis.

I went on to consider whether the adviser's later actions constituted unsuitable advice.

Did the adviser's later actions constitute unsuitable advice?

Ms M said she asked her SJP adviser for help once the council had reviewed her benefit entitlement. She said he'd written to the council on her behalf to dispute the decision. But the information he'd used to argue her case wasn't correct. She also said that although she thought her adviser would represent her at her appeal hearing, he'd withdrawn his support.

Ms M's adviser said he had helped Ms M with the practical aspects of her appeal. But that he'd explained he wasn't a benefits or tax adviser. He said she'd dictated her appeal letter to him. He also said that while Ms M had asked him to represent her in the tribunal, he'd declined.

Although I can't know exactly what happened here, I'm more persuaded by the adviser's testimony. I say this because I wouldn't expect a financial adviser to be a benefits specialist. Nor would I expect one to represent a client in a benefits tribunal. Therefore, while I don't doubt Ms M's recollection of events, I can't fairly say that her adviser's later actions constituted unsuitable advice.

I next considered whether Ms M would've made the income withdrawals even if the adviser had explained their impact on her Housing Benefit and Council Tax Reduction.

Did Ms M need to make the income withdrawals from her pension?

Ms M said she couldn't reduce her discretionary spending, it wasn't that she didn't want to. Her adviser also felt that Ms M had needed to spend the money she'd withdrawn.

Therefore, while I acknowledge that Ms M said there wouldn't have been a benefits overpayment if SJP had provided her with suitable advice, I can't fairly agree. The evidence shows that Ms M needed the money she withdrew from her pension.

In summary, the evidence shows that Ms M didn't tell SJP or the council about her other pension, or the monthly income she received from her ex-husband. Therefore I'm satisfied that even if SJP hadn't advised that she took income from her pension, she would've had to repay some overpaid benefits. However, as I've explained above, I can't reasonably say that SJP's advice to withdraw from her pension the money Ms M needed for living was unsuitable.

The council's review concluded that Ms M was only entitled to a lesser rate of Housing Benefit as she hadn't included her two private pensions when her original level of entitlement had been assessed. The evidence shows that she also didn't include the income she received from her ex-husband between 2017 and 2018. While I'm sorry Ms M has incurred a debt due to the overpayment of two of her benefits, I can't reasonably hold SJP responsible for those debts. And I can't therefore require it to clear those debts on Ms M's behalf. Therefore I don't uphold the complaint.

My final decision

For the reasons I've explained above, I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 8 September 2025.

Jo Occleshaw
Ombudsman