

## The complaint

Mr E complains about St. James's Place Wealth Management Plc (SJP)'s advice to transfer his Phoenix Assurance with-profits personal pension to one of its Retirement Accounts. The complaint, which adopts a standard template for complaints brought by Mr E's representative against SJP, includes that:

- he was financially inexperienced and not looking to take any excessive investment risk
- he didn't fully understand the implications and the risks
- his Phoenix plan was already professionally managed and had access to a diverse range of funds, which allowed him to spread the risk and with lower charges.

## What happened

In January 2016, SJP carried out a fact-find of Mr E circumstances and financial objectives:

- Age 56, married, in good health with two financially independent children.
- Earning £26,300pa with monthly disposable income of £530.
- Owned his home with outstanding mortgage of £7,000, due to be paid off in three years.
- Intended to retire at 65.
- Other than an emergency cash fund, no other savings were recorded.
- Considered to be a medium risk investor.

Mr E was looking for the best prospects for growing his pension funds until he retired. He had two pensions. The Phoenix (ex-Britannic Assurance) with-profits plan had been used to contract out of the State Earnings Related Pension Scheme (SERPS) until 2012, and was valued at about £31,200 after a terminal bonus of about £12,900 and a market value reduction (MVR) of about £1,100 had been taken into account.

Phoenix was declaring an annual bonus of 3%, after taking into account implicit charges estimated to be 1%. Once added this couldn't be taken away when benefits were paid at retirement, but there were no other guarantees. The other fund options were the ex-Britannic Assurance deposit, managed or property funds. Mr E's other pension was an employer's Group Personal Pension (GPP) worth a similar amount, to which both he and his employer were each contributing £84.89 each month.

After discussion, SJP and Mr E agreed that the Phoenix with-profits fund may not provide him with the medium-term growth he sought, or diversification into other funds to reduce the risk of them all falling in value at the same time. Neither the Phoenix plan nor a cheaper stakeholder pension alternative could facilitate payment for the regular reviews he wanted to have in future. Mr E liked the concept of SJP's investment management approach which employed a panel of external fund managers.

The following month SJP issued a suitability report recommending Mr E transfer his Phoenix plan, but not the GPP (which was still receiving employer contributions) to a Retirement Account. Its Managed Funds portfolio was selected to be consistent with Mr E's medium attitude to risk and to achieve more diversification. This sub-invested in the following:

AXA Framlington Managed Fund (15%)  
Global Equity Fund (15%)  
Global Managed Fund (10%)  
Multi Asset Fund (15%)

Schroder Managed Fund (15%)  
Strategic Income Fund (15%)  
Strategic Managed Fund (15%)

The letter explained the benefit of adding the ongoing review service now that Mr E was getting closer to his retirement age. The reviews would be used to investigate any potential retirement income shortfalls, and to consider the level of any additional contributions. Mr E wasn't prepared to make additional contributions at that point as *"you do not have a retirement income target in mind [but] we will review this in future meetings"*.

Advising on and operating the Retirement Account would cost Mr E an equivalent of 1.25%pa, plus the charge for ongoing advice of 0.25%pa. Adding in the cost of the above funds, which ranged from 0.32% to 0.63%, the overall reduction in growth up to retirement would be 0.9%pa (for the product charges only) or 1.8%pa (including the costs of initial and ongoing advice). SJP explained that based on charges alone, the SJP plan would need to outperform his existing Phoenix plan by 0.64% or £191pa up to age 65, and *"It is important to understand there is no guarantee that any alternative investment will fully recoup the costs of transfer and you understand that there is no guarantee that this additional growth requirement will occur"*.

Although Mr E wasn't transferring his employer's GPP, SJP similarly noted that this cost 0.77%pa to run – and therefore based on charges alone the Retirement Account would need to outperform this by 1.35%pa. I note there seems to be an inconsistency in the calculations between the Phoenix and GPP schemes. As I haven't seen the workings of those calculations I will simply note that the reduction in yield after all charges of the SJP plan was about 0.8% higher than the Phoenix plan.

My understanding is that the promised annual reviews didn't subsequently take place and this wasn't questioned by Mr E until he brought his complaint. However Mr E did crystallise some of the funds in 2019. SJP says that the original Partner who advised Mr E left SJP in July 2023 and Mr E then withdrew or transferred his funds before a new Partner managed to review his situation. The Retirement Account was closed in July 2024.

Following the complaint brought by Mr E's representative, SJP concluded that its original advice had been suitable for his circumstances. But it agreed the annual reviews hadn't been carried out. It offered a refund of the cost of missed reviews after May 2018 (as those weren't time barred), meaning the reviews for 2020, 2021, 2022 and 2023 totalling £608.86 – to which interest would be added plus £150 for the distress and inconvenience.

Mr E's complaint was brought to our service with the explicit instruction not to investigate the missed reviews aspect, but the suitability of advice aspect. His representative says that the pension switch can't be justified on cost grounds when a transfer to the GPP would have cost less. It also questioned the MVR of £1,100 Mr E had incurred.

Our Investigator was unable to resolve the dispute informally, so it has been passed to me.

### **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.

In deciding what's fair and reasonable, I'll take into account relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and (where appropriate) what I consider to have been good industry practice at the relevant time (DISP 3.6.4R in the FCA

handbook). So I'm mindful of the FSA's thematic reviews into pension switching, both in 2008 (highlighted by Mr E's representative) and 2012. Also, the rules on suitability in COBS 9, and the overarching principles and rules which SJP was subject to, meaning it should only recommend a transfer if it was in Mr E's best interests.

Mr E's complaint centres on the additional cost of the SJP policy versus not only the Phoenix plan he was transferring from, but also the employer's GPP he had as an alternative.

Firstly, I'm satisfied that the switch from Phoenix was recommended on the grounds of improved performance prospects, notwithstanding the increased cost. Both the increased cost, and the fact that this couldn't *guarantee* increased performance, were broadly explained to Mr E. I accept there may be an issue with whether the true outperformance figure for Phoenix was nearer 0.8%pa than 0.64%pa, although I'm aware that the 0.8%pa figure required on the illustration was already rounded (potentially upwards). However I don't think the difference between 0.64% and 0.8% is material for the reasons I give below.

SJP's covering letter to its suitability report confirms that it had provided Mr E with an AKG Factsheet giving "*information and independent ratings on the With Profits investment you currently hold*". It had also given him Phoenix's Principles and Practices of Financial Management (PPFM) Document as required by the regulator for that fund. The suitability report then documents the resulting discussion Mr E had with the SJP partner:

*"You are particularly concerned that your funds are heavily weighted in with profits and we therefore discussed the AKG rating which shows a future performance rating of 2 where 5 is high and 1 is low and you felt that this was "not very good" and your funds could have the potential for better growth prospects in more diversified funds."*

I've looked at the AKG report. It gave a 2/5 rating for both future performance and financial strength, noting that the fund had closed to new business in 2006. It went on to explain,

*"The future claim payouts are estimated using realistic assumptions and the annual bonuses are set at such a level that if experience turns out to be in line with those assumptions, the overall amount of the payout paid in the form of final bonus will be in line with a target proportion. Under current investment conditions, the overall target is that 25% of the overall value of payouts, calculated before any future augmentation provided by a release of the estate, will be in the form of final bonus."*

I note that in Mr E's case the final bonus, after taking into account the MVR, formed about 39% of the transfer value. This would suggest that Mr E was still obtaining good value on exiting the fund early and was obtaining his fair share of the with-profits estate, notwithstanding the MVR.

That doesn't necessarily mean Mr E should have expected to do terribly by remaining in the fund either. I say that as the AKG report said there weren't a lot of liabilities in the fund in terms of annuities in payment or guaranteed annuity options (although there was indirect exposure to reinsured risk from other Phoenix with-profit funds). I'm also not strongly persuaded by the suggestion that it was inadequately diversified for the level of risk it (intentionally) posed. It still had a 35% equity and 8% property exposure, which is higher than some other closed with-profits funds; although in this case all the equity exposure was to the UK, so it did lack some diversification to that extent. The AKG report went on to say:

*“Past performance results had deteriorated relative to other companies in recent years...At March 2014 however the relative position appears to have improved with specimen values spread over the bottom three quartiles and again at March 2015 when they cover the top three quartiles... However, in its favour, this business still has a reasonable EBR [equity backing ratio] for a closed fund, at least for the present.”*

This suggests that the payout Mr E was getting represented an improvement on recent times. And I think the key issue in Mr E's case was that he was assessed as having a higher attitude to risk than the low to medium usually associated with this type of fund. So, as he was obtaining reasonably good value from leaving the fund early, Mr E then had some prospect for obtaining better returns from taking a higher (medium) risk and investing more in equities.

I'm satisfied that Mr E's attitude to risk was arrived at through an open discussion based on his medium to long term investment horizon, the fact that this was not his only pension and that he and his employer were continuing to make further contributions to the GPP. As such he could reasonably afford to take a medium risk in the hope of obtaining a better return, albeit one that SJP warned him wasn't guaranteed and came at a higher risk than where he was currently investing. And I think SJP made a fair observation that the Phoenix plan simply didn't offer him the investment choice he could achieve elsewhere, such as with SJP.

Mr E's complaint questioned why he couldn't transfer the Phoenix plan into his employer's GPP. Undoubtedly it would have been cheaper for him to do this, but I think it was reasonable for SJP's partner to take all the costs versus the benefit into account when deciding if his advice was in Mr E's best interests. The fact find noted that Mr E hadn't wanted to choose his own funds in that scheme, so was invested in the default strategy – and preferred the benefit of having his funds professionally managed by SJP. That isn't to say that the funds in the GPP weren't being properly managed, but what I think Mr E agreed to pay for, knowing it would be more expensive, was a more hands-on approach by SJP's fund managers and his adviser in carrying out regular reviews.

Whilst Mr E's representative might question the value in these services, I note that the ongoing review element only cost Mr E an additional 0.25% per year. And when questioned they admitted that *if* the ongoing reviews had been provided they would find it difficult to disagree with SJP's view that the increase in charges would have provided value to Mr E. That suggests to me that the access to ongoing advice and support was a genuine aim of Mr E at the time, and notably this wasn't a feature available through his GPP.

I accept the criticism that SJP didn't, it seems, offer the annual reviews it promised – resulting in a refund of most of these charges to Mr E. Nor does it appear that Mr E followed up the missed reviews with the partner at the time, which might call into question whether these were important enough to him. But it's also possible that nothing materially changed in Mr E's circumstances for him to need to call on that service. I've taken everything into account, including the relatively low additional cost of the ongoing reviews and what Mr E might reasonably have seen as a potential benefit to him – albeit one he didn't use. I think it's plausible that both he and the adviser genuinely thought the SJP advisory and management service would benefit him more than transferring to the GPP.

SJP was also right in my view not to recommend the GPP was transferred into its Retirement Account. This was both because of the continuing employer's contributions and the split strategy allowing about half of Mr E's pension at that time to grow in a lower charging environment. So in the event that the greater attention SJP was paying to his Phoenix pension in return for higher charges didn't produce the anticipated improvement in returns, Mr E wasn't exposing all of his pension provision to that risk. In future the possibility of consolidating the two pensions together could be considered if Mr E remained happy with

the service he was paying for, such as when he retired from the employer with the GPP and was interested in taking flexible withdrawals rather than buying an annuity.

There would have been other pension products, accessible through an independent financial adviser, that were potentially cheaper to operate and advise on than SJP's. But it should be noted here that the adviser was 'tied' to SJP rather than representing the whole of the market. The regulator required SJP to explain this polarised position as part of the disclosure documentation it issued, which was noted as an enclosure in the covering letter to the suitability report.

There was also a clear warning that Mr E was paying increased costs as a result of switching his pension. Potentially this warning was slightly overplayed with the GPP and slightly underplayed with the Phoenix plan. But overall, I think SJP broadly put Mr E into an informed position that he was paying to get a different service with an improved outcome that was hoped for but not guaranteed. At his medium attitude to risk I can't fairly say the advice was more likely than not to have made him worse off than remaining with Phoenix, such that the transfer shouldn't have been recommended.

The additional 0.5%pa or so that Mr E ended up paying for the management of and advice on his pension than he might have paid elsewhere was quantified at the time by SJP in terms of their different approach to investment management. It isn't for me to say whether that should have been more important to Mr E than getting a pension for the absolute lowest cost, as cheaper doesn't always mean better. That was a decision for Mr E to weigh up after SJP explained what it could do for him, the additional cost, and the fact that it wasn't providing solutions for him from the whole of the market.

Future performance couldn't accurately be predicted, and it was difficult to compare the proposed Managed funds with the performance of the with-profits fund Mr E was leaving, as they weren't on a like-for-like basis. None of this in my view would make SJP's advice unsuitable for Mr E under the regulator's rules. The adviser recommended Mr E a suitable product from those available to him to meet Mr E's needs at the time.

### **My final decision**

I've concluded that SJP didn't provide Mr E with unsuitable advice in 2016. That would then leave his representative to discuss the offer of a refund for ongoing advice charges, which it didn't want me to investigate, with SJP directly.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 16 March 2026.

Gideon Moore  
**Ombudsman**