DRN-6266062

Financial Ombudsman Service

The complaint

Mr B has complained that St. James's Place Wealth Management Plc (SJP) unsuitably advised him to switch pensions, and that it failed to provide the ongoing advice service he paid it for subsequently.

What happened

Mr B met the SJP adviser in May 2022. He was 54 years old, and married with no dependants. He was employed, earning £37,000 a year. He and his wife intended to work to 67, but had various debts, which they were looking to repay using their pensions at age 55. SJP assessed that Mr B had a medium attitude to risk.

The pensions SJP were looking into consolidating with Mr B were:

- a Prudential traditional with-profits pension with a value of about £1,600
- an Aviva personal pension in a default mixed asset lifestyling approach with a value of about £9,500
- a Prudential Flexible Retirement Plan invested in its PruFund Growth fund (a smoothed return fund) with a value of about £150,500.

Mr B and his employer were also due to start contributing to a new workplace scheme with charges of 0.49%.

The adviser recommended that the three existing schemes should be transferred to SJP and invested in the Managed Funds Portfolio. The reasons for the recommendation were that it would shortly allow Mr B to take tax-free cash in February 2023 while deferring income withdrawals to 67. This would then allow him to repay loans, pay for a new kitchen, and buy his wife a new car. He also wished to benefit from SJP's approach to investment management and ongoing advice.

Among other things, the suitability report confirmed that both the Aviva plan and the Prudential Flexible Retirement Plan allowed drawdown. The adviser calculated that for the transfer to 'pay off' based on charges alone, the new plan would need to outperform the old plans annually by 1.21% (Aviva), 1.01% (Prudential with-profits), and -0.19% (Prudential Flexible Retirement Plan). Due to the much larger size of the Flexible Retirement Plan, this gave combined outperformance of -0.09%. That is, the SJP funds could underperform very slightly in comparison to Mr B's original funds and he'd be in the same position after charges.

The report also considered that if Mr B (theoretically) transferred to the new workplace scheme and then accessed his tax-free cash, the SJP plan would need to outperform that scheme by 1.47%pa. Transferring to that plan was discounted because Mr B wished to benefit from SJP's investment management approach and ongoing advice.
The adviser produced a future illustration. Among other things, this showed that SJP's charges averaged out over the investment term at 2% per year, which included ongoing advice charges of 0.5%pa.

Mr B accepted the advice and subsequently drew the maximum tax-free cash he was

entitled to on his 55th birthday. I understand his wife (whose 55th birthday came before Mr B's) was also advised to do a similar thing by SJP, although we haven't received a complaint on her behalf.

In mid-2023 SJP updated its fact find and issued an annual review letter.

A Claims Management Company (CMC) raised the complaint summarised above in April 2024.

A further review took place in September 2024, following which Mr B made a £10,000 taxable withdrawal from the pension.

SJP rejected Mr B's complaint in June 2025, after his CMC had referred it to our service. It considered that the advice had been properly documented and suitable, and that the ongoing advice service had been provided.

The CMC has since confirmed that it only wants this service to consider the suitability of the original advice, arguing that:

- The advice to access tax-free cash as soon as possible was detrimental to Mr B's financial future, particularly in respect of his retirement income.
- The SJP Retirement Account was more expensive than the ceding schemes, requiring outperformance each year to remain at the same performance level.
- Mr B was encouraged to access funds for reasons suggested by the adviser rather than him informing the adviser of his objectives.

One of our Investigators considered the complaint and accepted that SJP's records of Mr B's attitude to risk and objective of withdrawing tax-free cash – including to repay debts – were reasonably established. He also thought – given Mr B's age and objectives – he was likely to benefit from an ongoing advice service (something which he had already been paying a different adviser 1%pa for on his Flexible Retirement Plan).

Whilst the smaller Prudential plan needed to be transferred somewhere to allow tax-free cash access without an income, he accepted that in fact both the smaller plans would likely have greater growth potential after they were transferred to SJP and no longer subject to smoothed or lifestyled performance, which was more compatible with Mr B's medium attitude to risk. So, there was a case for consolidating those two plans with SJP despite the higher charges, particularly as the adviser disclosed he was tied to SJP and could only advise on its own products.

The sticking point with the Investigator was the transfer of the larger Prudential Flexible Retirement Plan. There was a benefit in charges to also consolidate this plan with SJP – due to the comparatively higher charges taken to pay for Prudential's smoothing process, and the 1% ongoing advice charge being double what SJP would charge. In fact, it wasn't clear to the Investigator how SJP had arrived at an outperformance figure of -0.19%. Totalling up the disclosed charges of both providers suggested the true outperformance was about -0.7%, in other words even further in favour of SJP.

However his view was that SJP had – implicitly at least – given the advice on the basis of the expected improved returns Mr B would gain from investing in its Managed Funds approach. The adviser referred, generically, to the 'benefit' of that approach which would reasonably be understood to be a financial benefit – and also commented that Mr B *"felt there was a reasonable opportunity for sufficient growth to be achieved"* in the new funds, which was likely to be the adviser's own view being presented as Mr B's. But a comparison of the past performance of that approach versus the PruFund Growth fund was significantly in favour of

Prudential: 135.3% versus 104.1% over the same term of about 11 years.

The dispute between the Investigator and SJP has since focused on the following:

- Pension switching guidance from the FSA in 2008[1] saying that where a recommendation is made to switch to a more expensive plan on the basis that the new investments are likely to be able to outperform by more than the additional charges, there should be supporting evidence showing why this is considered likely. SJP says that this doesn't apply because its plan wasn't more expensive than the Flexible Retirement Plan.
- The extent to which past performance data is relevant to SJP being able to demonstrate that in future its Managed Funds approach could outperform the PruFund Growth fund, given the adage that 'past performance isn't a reliable guide to the future'. SJP considers that there can be a future prospect of this without it necessarily being demonstrated in the past.
- Pension switching guidance from the FSA in 2012[2] saying that where improved performance was an objective of the client, firms should clearly demonstrate why they expect improved performance to be more likely in the new investment. The Investigator considers this squarely applies to SJP's recommendation because of the comments made by its adviser, noted above. But SJP considers withdrawing cash to repay debts and accessing ongoing advice were higher priorities for Mr B.

The Investigator was thus minded to uphold the complaint on the basis of the improved future performance trumpeted by SJP not being demonstrated. But as agreement couldn't be reached, the complaint was referred to me as Ombudsman. I sent an email to both parties on 18 March 2026, explaining why I was likely to reach a contrary view to not uphold the complaint.

SJP didn't respond further to that email and the CMC's response on behalf of Mr B was simply to say that it would like me to now issue my Final Decision. As I'm satisfied with the reasoning I've already provided, I will adopt that as my Final Decision below.

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 my view this is a complaint about pension switching advice given mainly for the benefit of accessing tax-free cash to repay debts, even though the claimed benefits of the SJP management approach and ongoing advice were also mentioned.

The CMC's main reason for rejecting SJP's final response to the complaint was that Mr B was encouraged to access funds for reasons suggested by the adviser which were detrimental to his financial future. Notably this reasoning didn't form part of the original complaint brought to SJP which mentioned (amongst other points) *"Mr B did not fully understand the implications of this recommendation and that he could lose all his accrued and future guaranteed pension benefits."*

I'll discuss the potential loss of guarantees below. But firstly, I'll say I agree with the Investigator that the adviser would have had little to gain from embellishing access to cash as an objective, given that it would remove a quarter of the funds from SJP's management at

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[1] https://webarchive.nationalarchives.gov.uk/ukgwa/20081231021521mp_/http://www.fsa.gov.uk/pubs/other/pensions_switch.pdf
[2] https://www.fca.org.uk/publication/finalised-guidance/fg12-16.pdf

the outset - and in the case of the largest policy forming the vast majority of the funds it was already cost-effective to move it to SJP. On balance, I agree it's more likely the objective came from Mr and Mrs B.

The fact find records that they were focused on repaying debts including hire purchase arrangements, personal loans and potentially some of their mortgage (with also some desire to finance a new kitchen and car). It suggests the prompt for this was them having lost some close friends to COVID and wanting to enjoy their lives more.

From what I can tell of the subsequent annual review, the mortgage wasn't cleared using the tax-free cash payment, but I expect as secured debt this was the lowest of Mr and Mrs B's priorities. But there's a suggestion in that review documentation that the freeing up of their other costs had enabled them to start overpaying on the mortgage. As the Investigator said, it's likely Mr B has derived a benefit from accessing the tax-free cash – which I note in any event proved insufficient as he subsequently withdrew a taxable amount of £10,000 from the pension. This is consistent with there being a genuine need to access funds from the outset in my view.

The Investigator already found that transferring two smaller pensions (totalling only £11,100 or 7% of the total) was suitable advice notwithstanding the outperformance required in future. I agree that the SJP Managed Funds approach had the potential to outperform the traditional with-profits fund in the case of one plan and a risk-reducing lifestyling strategy in the case of the other, where Mr B had a medium attitude to risk and so could afford to take higher risks than in the ceding schemes. As he was only accessing tax-free cash from the plans and was likely to have many years before he would need to access any significant amount of further benefits, I agree that he could afford to take a medium risk.

Mr B could have made enquiries directly with his pension providers (or his existing adviser) to access tax-free cash directly from the plans. In the case of at least his largest Prudential plan worth £150,000 I believe it would have been possible to do that. However, he didn't do so and approached SJP for advice. That suggests to me on balance that he felt there was a benefit in doing so, including in getting ongoing advice for which SJP disclosed there would be a future charge of 0.5%pa. That was in fact less than the 1%pa he was paying his existing adviser. He was also made aware in the disclosure documentation that SJP only offered advice on its own products.

Having considered the approach taken here and consistently with previous cases I've decided, I'm satisfied with the Investigator's conclusions on the suitability of transferring these two smaller plans. I agree that there was a reasonable prospect for Mr B to benefit overall from accessing tax-free cash from these plans with SJP and receiving ongoing advice. So that leaves the remaining Prudential plan of £150,500 or 93% of the total transferred.

This larger plan was invested in a more modern type of fund that incorporated smoothing – the PruFund Growth fund. But paradoxically, because that had been sold by an adviser who was still collecting a 1%pa ongoing advice charge, it was notably more expensive to run than the proposed SJP plan. SJP stated the underperformance was 0.09%pa, but I agree with the Investigator's calculations based on Prudential's projection that it would underperform by about 0.7%pa due to charges alone. This was made up of an annual management charge of 1.450%, 'Further costs' Prudential disclosed of 0.240%, and the 1% ongoing charge to the existing adviser, totalling 2.7% compared with SJP's 2%.

The FSA's 2008 report highlighted unsuitable advice with, *"A pension incurring extra product costs without good reason…where, for example…the reason was fund performance, but there was no evidence the new scheme was likely to be better."*

I agree with the Investigator that it's not particularly clear whether this expectation was engaged when the new pension was not in fact more expensive to operate. But the discussion has also turned to a further report by the FSA in 2012, which said:

"We saw examples of firms recommending switches based on improved performance prospects, but providing no supporting evidence to show that these performance prospects were likely to be achieved. While we acknowledge that firms cannot be precise about the potential for higher returns, where improved performance is an objective of the client, firms should clearly demonstrate why they expect improved performance to be more likely in the new investment."

So, the reference to extra product costs triggering the requirement to justify higher performance is absent from the FSA's 2012 comments. And it seems to be implicit in what the regulator said in both 2008 and 2012 that not all consumers will be making a pension switch for improved performance prospects. That is not to say that they would be transferring expecting to be worse off per se, but rather that the main focus of their objectives may be on securing some other benefit – such as in this case access to the tax-free cash, together with ongoing advice at a lower cost than Mr B was paying to his existing adviser.

The Investigator presumed that Mr B was transferring for improved performance prospects based on the comments the adviser made in his suitability letter on the benefits of SJP's Managed Funds approach, and a statement attributed to Mr B (but which was in all likelihood the adviser's opinion) that he thought these funds had good prospects of outperforming the PruFund Growth Fund. I'm aware these are generic references made in most if not all SJP suitability reports.

By contrast, the objective of accessing tax-free cash was specific to Mr B and it would appear to have been the highest priority in his case. But I do agree that, as a result of this, Mr B would not expect to end up with materially worse performance prospects on the remaining funds – and indeed if that was provably the case it's likely to render the advice unsuitable.

Due to its smoothing process the PruFund Growth fund did operate in a similar way in some respects to traditional with-profits funds. The suitability letter records that the adviser handed Mr B a Prudential with-profits guide and an AKG report *"to explain how these funds work",* but in my view it was his job to set out the key differences in how the Prudential and SJP funds were managed in huis own words, to ensure that Mr B understood this. So I've considered what difference it would have made if the adviser had done that.

I don't consider the PruFund Growth fund contained the same sort of guarantees as the much smaller Prudential with-profits policy Mr B held. Its performance, whilst smoothed, was tied more closely to the rise or fall in value of the underlying assets, with an algorithm that made one-off increases or reductions to the policy value to keep it within a margin of tolerance. One-off reductions had recently been made to the fund when the markets suffered in the COVID pandemic – although not as extensive as the amount by which the markets themselves fell – and since then smaller increases had been added back on.

The future Expected Growth Rate of this fund had also been reducing: it had been as high as 8% in the past but was now 5.9%. On balance I think the main advantage of this fund was that it was suited to policyholders who were nervous about large fluctuations in the short-term – the smoothing process helped with this. But that process in and of itself wasn't necessarily going to improve the final value Mr B obtained at retirement versus directly investing in shares and bonds – as that would likely depend on the state of the markets at the particular time he left the fund. It could be said that on average, there wouldn't be a

massive difference in Mr B's favour as the smoothed price tracked fairly close to the actual value of the assets.

This wasn't the only difference between the PruFund Growth fund and SJP's Managed Funds approach. The latter held 20% more in shares and alternative assets as opposed to bonds, property and cash – and this arguably meant that it was better placed to benefit from a rising market where typically share prices had the highest volatility and increased the most.

Whether Mr B could reasonably be expected to take the risk of a greater investment in shares and alternative assets depended on his attitude to risk. Like the Investigator, I don't think SJP was wrong to categorise him B as medium risk given the term of 12+ years he had until his likely retirement date, and even though at that time his pensions were his main asset other than his home. Paying off their other debts would I think mean over time Mr and Mrs B were more likely to be able to accumulate other savings in future.

Although it was an increase from the level of risk Mr B was taking with his existing funds, I think it remained broadly a medium risk approach when taking the above factors into account. However I'm mindful of the Investigator's finding that despite its greater focus on bonds to provide smoothed returns, the PruFund Growth fund had significantly outperformed SJP's Managed Funds approach over the previous 11 years – to the tune of 8%pa vs 6.6%pa on average.

I don't think it's reasonable for SJP to entirely dismiss this outperformance even if the advice wasn't predominantly given to improve the performance prospects. The adviser provided Mr B with an AKG report detailing the financial strength, future performance and transparency of all with-profits funds, so he presumably thought these factors were relevant to that extent. Unhelpfully, the data was over six years out of date. But other than one Friends Provident fund, Prudential was the only provider to score 5/5 in all these categories on several funds including the PruFund Growth fund. And that's consistent with what the Investigator established about its past performance.

Notably though, about half of this outperformance would have been eroded away by the higher overall charges Mr B was already paying in the Prudential Flexible Retirement Plan (including for ongoing advice). In order to provide suitable advice, and given the other benefits of Mr B consolidating his pensions with SJP, I think the adviser only needed to have a reasonable basis for believing – obviously without any guarantees – that in future, the Managed Funds approach would be able to perform at least as well as Mr B's existing Prudential policy; even if it hadn't done in the past. That would be consistent with the FSA's 2012 report.

And on balance, I'm of the view that this test was met by the fact the Managed Funds approach had a 20% greater investment in shares and alternative assets, which were typically likely to achieve a higher return over the long-term. And because Mr B's existing policy was already costing him 0.7%pa more to run, which was a further buffer against the SJP funds underperforming. To reach a conclusion that the complaint should be upheld in spite of the future performance prospects of the SJP funds would in my view be over-relying on past performance which, as is often said, is not a reliable guide to the future.

In conclusion therefore, I consider a case for consolidating all three of Mr B's former pensions with SJP – both individually and collectively – was demonstrated. I should add that the adviser did consider the possibility of Mr B consolidating his pensions with his then employer's workplace scheme, but explained that this wouldn't be able to facilitate the payment of charges for ongoing advice from the pension. (The same point could also have been made for a cheaper stakeholder pension, which the FCA's rules required SJP to take into account.)

As part of doing this the adviser did explain that the workplace pension was significantly cheaper to operate than what he was offering (cheaper even than a stakeholder pension or Mr B's existing schemes particularly the Flexible Retirement Plan). It would have been beyond his remit to make recommendations of how Mr B should invest within that scheme if he did consolidate his pensions there, or the extent to which it was even possible for Mr B to draw tax-free cash out without affecting his ongoing membership of the scheme.

I expect that it have been logistically more difficult, if not impossible for Mr B to consolidate in the workplace scheme and still withdraw cash. But I'm satisfied that the adviser made him sufficiently aware that there was another avenue he could pursue (but one which would not have SJP's ongoing advice offering attached to it). The fact that Mr B didn't go on to investigate consolidating his pensions in the cheapest scheme available to him suggests to me that he wouldn't have been attracted to a stakeholder pension either, had that been covered off in the adviser's analysis.

As the CMC isn't pursuing the other aspect of its original complaint about ongoing advice, I haven't found grounds for it to be upheld. And the CMC has provided no further arguments for me to consider since communicating these findings to it two weeks ago.

My final decision

I do not uphold Mr B's complaint and make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 28 April 2026.

Gideon Moore
Ombudsman