DRN-3770263

Financial Ombudsman Service

The complaint

Mrs H complains that St James's Place Wealth Management plc (SJPWM) gave initial advice that was unsuitable. Further Mrs H didn't receive ongoing advice, despite paying a fee for it. Consequently, her portfolio wasn't adjusted to reflect changes in the selected funds' risk profiles and investment strategies.

What happened

Mrs H is represented in bringing her complaint by her husband. But, for ease, I'm just going to refer, in the main, to Mrs H. I've set out what's been said on her behalf as if she's made those comments herself. I've read and considered everything but what follows is necessarily only a summary of some of the key events and exchanges.

Mrs H became a client of SJPWM in late 2016. A suitability report was issued on 14 December 2016. It recorded that Mrs H had accepted a recommendation to set up a Retirement Plan (a SIPP or self invested personal pension) with SJPWM for a lump sum pension contribution (£38,400 net or £48,000 gross) to use Mrs H's 2016/2017 annual allowance and some carry forward. The covering letter listed various documents which it said had been given to Mrs H. The letter said a key element of financial advice was conducting regular reviews as objectives and circumstances would likely change over time. As part of the ongoing service a bespoke Wealth Management Plan jointly for Mrs H and her husband would be set up and reviewed at least annually and more frequently if circumstances dictated.

The report set out Mrs H's objectives, needs and circumstances and that it had been agreed she was a medium risk investor. A '*bespoke fund selection*' was recommended, comprising six medium risk rating funds: Global Equity Income (17%); Global Managed (17%); International Equity (17%); Strategic Income (15%); UK Equity (17%); and Worldwide Managed (17%). The report said an Early Withdrawal Charge (EWC) would apply to money withdrawn from the Retirement Plan within five years of being invested, including each regular contribution.

A further suitability report was issued on 28 February 2017 recommending that Mrs H transfer the value (£30,791.16) of an existing personal pension into her Retirement Plan and invest across the same range of funds as previously and in the same proportions.

Following a review in December 2017 two further suitability letters were issued on 19 and 29 December 2017. The first recommended a pension contribution of £20,000 net be invested 100% in the Global Smaller Companies Fund. The report noted that Fund's risk profile was high and, as Mrs H's attitude to risk (ATR) hadn't changed, the Fund was above her ATR. She was aware of that and the reason for the recommendation – to provide further diversification across her range of global equity funds with access to an area of the market typically less covered by brokers and generally regarded as less efficient.

The second report recommended a contribution of £19,000 net to be invested 50/50 in the Global Emerging Markets Fund – which had a risk rating of high – and the Japan Fund – an upper medium risk fund. Again both Funds were above Mrs H's medium ATR. The report

said the Global Emerging Markets Fund was priced relatively lower than other funds with the opportunity for potentially higher growth from emerging economies. The Japan Fund was a new investment opportunity which was also relatively lower priced and positioned to take advantage of corporate profits growing at a faster rate than the USA.

I understand the adviser emailed Mrs H in November 2018. She didn't reply or to the adviser's email sent on 25 January 2019 which said Mrs H would see from her Annual Wealth statement that her current valuation was lower than at the end of 2017, even if she'd made further contributions. The adviser set out what he saw as the reason for that – essentially market performance. He said he was happy to answer any questions and asked Mrs H to let him know if she'd like a call.

I've not seen there were any further exchanges between Mrs H and the adviser (although Mrs H continued to receive Annual Wealth statements) until 10 February 2021 when Mrs H emailed the adviser expressing concerns. Amongst other things she said the value of her Retirement Plan hadn't gone up much (just over 15%) in four years. Mrs H also said the Wealth Account statements didn't provide much useful information to understand performance. She asked for further details of each Fund's performance and how much she'd paid in total in fees. She said she wanted to transfer once the EWC no longer applied and asked what date that would be. She emailed again on 11 February 2021, querying if some funds had changed names and asking if a reduction in units held was due to fees deducted.

The adviser replied on 16 February 2021. He confirmed the charges: 1.62% pa, broken down into the Annual Management Charge (AMC) of 1.05% pa and a 0.57% fund manager charge. The cost of managing and maintaining the investments and 0.75% of the AMC was allowed for in the funds prices and was taken each a fund was priced. SJPWM took the remaining 0.3% of the AMC by cancelling the relevant number of units with one twelfth of the charge taken each month. Each month 0.025% of the number of units held were cancelled.

The adviser confirmed some of the Funds had changed names. Copies of the letters sent about the changes were enclosed. A report analysing the Funds' performance was also supplied, along with an explanation as to how the EWC would apply and the end date. Details of the total charges Mrs H had paid had been requested and would be sent on.

Mrs H replied on 18 February 2021. She said she didn't recall getting any of the letters except one in January 2020 letter about the Global Emerging Markets Fund. She said she should've been told about changes to the former UK High Income and Global Equity Funds whereby they no longer had an income mandate – the adviser knew income was important to her. She was disappointed with the lack of contact and with the information given on the Wealth Account statements. She said there were errors and minimal meaningful data which meant the investor had to undertake the analytical work.

Overall it seemed only the Global Quality Fund had done well. The UK Equity and Japan Funds had performed disastrously and the other Funds had significantly underperformed their benchmarks. She said she'd relied on the adviser to manage her Retirement Plan and advise or act as required. Her investments had been neglected and allowed to fester in underperforming but expensive funds. Six of the nine funds had one star ratings.

She asked the adviser to explain why she'd had no contact from him and why she hadn't been alerted to the fact that she was invested in the lowest performing funds. Nor had she agreed to be invested in funds which didn't do what they said. For example, the Strategic Income Fund's indicative yield of 7% pa had never been met. And she hadn't agreed to the style drift away from income funds.

She also said that in 2016 she and her husband had indicated some general investment views – including a big focus on income, no Neil Woodford Funds, a preference for international investments and emerging markets and, in 2017, the Japan and Global Smaller Companies Fund. With the benefit of hindsight those had been good calls so it was all the more disappointing that the selected funds hadn't captured the positive market performance or had moved away from the original income style. Mrs H said that sometimes it was better to cut losses but there'd been no discussion about that, even though the adviser was aware that most of the funds Mrs H was invested in had gone wrong some time earlier or were no longer invested in the manner she wished.

She was also concerned that each month units were sold to meet the AMC. That meant that fee wasn't captured within the performance of the units and created some 108 transactions each year of which she'd been unaware. That was a considerable administrative burden and cost with error risk and meant that units will be sold at inopportune times. She said clients should be informed when their shares were sold.

She said SJPWM's Investment Committee 2020 report had neglected to mention that almost three quarter of the funds were ranked in the bottom 50% of all funds and almost half in the bottom 25%. Most of her funds underperformed during the market falls in 2018 and March 2020 and still performed poorly during the strong recovery. Even if SJPWM disputed some of the independent fund research the number of underperforming funds should be of concern.

Mrs H said she'd wanted to move away from SJPWM once she was no longer subject to the EWC. But she now wanted to move away immediately and without penalty and be refunded the advisory and other fees as she hadn't received any advice or service. She set out a number of issues which she felt affected other clients, including the effect of the EWC; inadequate reporting, communication and advice; advisers having insufficient market knowledge and being restricted to mainly underperforming funds; and a failure to address widespread fund manager underperformance.

The adviser replied saying SJPWM's Head Office had been asked to investigate the issues raised. There were some further exchanges,, including about whether there was a signed client agreement letter, the total fees paid, fund performance and the findings of a Yodelar report. Mrs H also initiated the transfer of her SIPP fund. An issue then arose about the amount transferred which was less than the amount the adviser had mentioned.

SJPWM responded to Mrs H's concerns on 4 May 2021. A report from the Investment Management Team was enclosed. It said the main reason why Mrs H's portfolio had underperformed the ARC (Asset Risk Consultants) Equity Risk Index was the style bias to Value funds. How Mrs H's portfolio was made up and her exposure to funds which were or had become Value style funds was set out. Also enclosed was a summary about the Yodelar report, rejecting its findings.

In the main SJPWM didn't agree that Mrs H's concerns were justified. But the adviser had acknowledged, after speaking to Mrs H in November 2018 and January 2019, that he'd failed to make contact after that, although he'd have been available to discuss any issues. SJPWM offered to refund the servicing charges since November 2018 (£931.71).

Further, when Mrs H had decided to transfer away, the adviser had given a plan value as at 23 March 2021 of £155,906.44 and agreed to switch the funds into a Money Market Fund to avoid unit price fluctuations before the transfer concluded. Fund switches take place on the day following instructions to switch and there was a drop in fund value over that one day. In addition, EWCs were applied as Mrs H was transferring within six years of contributions being made. The final transfer value was £152,966.68 which was less than the value given on 23 March 2021. As a gesture of goodwill SJPWP had reimbursed the difference

(£2,939.76). SJPWM also offered a payment of £500 for distress and inconvenience. The total offer was £4,371.47 of which £2,939.76 had been paid, which left £1,431.71 to pay.

Mrs H wrote again on 7 May 2021. She didn't feel all of her concerns had been addressed and she set out some thirteen points she wanted SJPWM to consider further. As there was no client agreement letter she'd been unaware of her client status. The service she'd received was execution only but with high advisory fees and no performance data or industry standard valuations. She said she hadn't been properly informed about SJPWM's services, product terms, fees or ongoing client servicing. If she had been informed verbally or via a client agreement letter, she wouldn't have invested with SJPWM. She'd been put in investments that were or had become unsuitable for her. She hadn't been given sufficient information to review or manage her investments herself and the adviser had failed to do so.

From the figures provided, the fees charged by SJPWM not paid out to external managers totalled £5,150. Mrs H said that, plus the £500 offered (so in total £5,650) would be appropriate compensation and to be paid in addition to the sum already paid (I think that was the £2,939.76 difference in fund values).

SJPWM said it would review the complaint. SJPWM wrote again on 21 May 2021, increasing its earlier offer (£1,431.71) to £1,931.71, to include a further £500 (so in total £1,000) for distress and inconvenience.

Mrs H referred her complaint to us. One of our investigators looked into what had happened. He thought SJPWM's offer was broadly fair and reasonable. He said the complaint could be broken down into suitability of advice; ongoing advice; issues about the Annual Wealth statements; and fund performance. About each he said, in summary:

- The advice given in 2016 and 2017 was broadly suitable. Mrs H had confirmed a medium ATR and she had capacity to take that degree of risk. She had input as to the bespoke portfolio which was set up and she had a high level of investment understanding. Although the suitability reports referred to SJPWM's active governance and monitoring of investments, Mrs H didn't have a discretionary fund management (DFM) agreement. All the charges had been clearly disclosed.
- SJPWM hadn't upheld the complaint but part of the ongoing service fees had been refunded, which implied there'd been a failure to provide the service the fees were meant to cover. When Mrs H was advised to transfer to SJPWM (whose charges were higher) it was recorded that she was concerned with a lack of service and advice from her existing provider. The covering letters for the suitability letters promised an in person review at least once a year but there'd been no annual reviews. The suitability reports stressed the importance of ongoing reviews. Mrs H was led to expect a high level of ongoing service. The adviser had admitted the service he'd delivered fell short. But, on the basis the advice given in December 2017 should've been reviewed within twelve months, the offer to refund the ongoing advice fees from November 2018 was reasonable.
- The information provided in the Annual Wealth statements complied with the relevant regulations, even if other providers supplied more information which enabled investors to track performance of individual funds more easily. Mrs H could've registered for online access. And there was considerable information about funds and their performance available generally.
- Mrs H wasn't a discretionary client and so SJPWM didn't have authority to move money from one fund to another without Mrs H's express permission. But SJPWM should've stepped in if they had concerns about any of the funds Mrs H was invested in. Fund performance is dependent on many factors outside of SJPWM's control. Had the adviser reviewed Mrs H's portfolio he'd have likely concluded it remained

appropriate for her as a medium risk investor seeking medium to long term growth.

Mrs H agreed the investigator had succinctly analysed the issues but felt there were errors or omissions. And reaching individual conclusions about each aspect had precluded consideration of the linkage between each issue. Mrs H raised a number of issues which she thought hadn't been considered. In summary:

- The product had been mis sold.
- She'd made a specific request, supported by the adviser, to be highly invested in income funds. Three (the UK High Income, Global Equity Income and Strategic Income Funds) were selected by the adviser and represented 49% of the initial portfolio. During the period of investment the UK High Income and Global Equity Funds dropped their income mandates. The Strategic Income Fund never achieved its stated 7% income aim. And there were issues with the Japan Fund. Those factors meant she should've been advised to move her investments.
- A critical aspect of the original advice was for SJPWM to help Mrs H consolidate her pensions into one SIPP. But the adviser said it would be too complicated and/or time consuming to transfer her largest pension, an occupational pension scheme, in respect of which Mrs H had received independent advice in January 2017.
- There was no client agreement letter or similar document. Mrs H wasn't told at the time if SJPWM's service was advisory or discretionary. There'd been confusion arising from SJP's failure to state what type of service was being provided.
- The Key Facts document and the Retirement Plan Terms and Conditions were only supplied after the money had been committed. Mrs H wouldn't have invested if there'd been full disclosure prior to the sale.
- There were serious errors in the Annual Wealth statements which rendered them valueless and dangerous.
- Mrs H also made a made a number of points with specific reference to what the investigator had said in his view.

The investigator considered Mrs H's comments but he wasn't persuaded to change his view. Amongst other things he said Mrs H's occupational pension schemes had been mentioned in the suitability report. If transferring was central to her objectives and she was dissatisfied with the reason the adviser gave for not proceeding with a transfer, she could've made that clear at the time.

And, about the lack of a client agreement letter, the investigator said the suitability letter referred to a '*Key Facts about our Services and Costs*' document. The example document provided set out the service provided was restricted advice and that SJPWM would advise and make a recommendation after it had assessed the client's needs and products from a limited number of companies would be offered. There was no reference to SJPWM providing a discretionary service – if that had been the case it would've featured heavily in the suitability report.

Although SJPWM had to provide a client with certain information about its services, there was no requirement to obtain a signed client agreement. The key facts document gave the required information. There was no evidence to demonstrate conclusively when documents were provided. But the covering letter with the suitability report says they'd been provided. If they hadn't been included Mrs H might have queried that at the time.

About any errors on the Annual Wealth statements, the issue was whether these had led to or contributed to the losses Mrs H alleged. But the central question was whether those losses stemmed from a failure to provide suitable advice.

There were some further exchanges, including about when the Retirement Plan terms and conditions had been provided. Mrs H said SJPWM's letter of 29 December 2016 confirms the date of receipt of the funds – on 21 December 2016 – and says the plan schedule and terms and conditions are enclosed. The schedule couldn't have been produced before then and the terms and conditions hadn't been previously provided. The upshot was that she didn't receive any information about the product itself in advance. Mrs H said only providing the terms and conditions after the investment had been made was unfair and in breach of consumer rights legislation and meant SJPWM isn't entitled to enforce its terms, including those relating to the collection of fees. Mrs H later added, if there was any dispute or doubt as to the terms and conditions only having been received after the investment had been made, she should be informed, so she could seek further evidence.

Mrs H maintained that consolidating her pensions, including her occupational pension benefits, was important. And that the lack of information on the Annual Wealth statements meant the client is left in the dark and doesn't know the right questions to ask. The investigator had referred to the absence of anything in the suitability report to indicate that the service was discretionary and not advisory. But the client doesn't know all those terms or the different types of service so the adviser needs to spell it out so everyone is clear what to expect - again that's standard industry practice.

The investigator responded. Although the terms and conditions should've been provided before Mrs H committed to the transactions, when she did get them she hadn't queried anything so it could be assumed she'd have gone ahead if they'd been provided earlier. The investigator maintained that the recommended portfolio was suitable. Although Mrs H was very disappointed with the investment returns, SJPWM's management of the portfolio hadn't been negligent.

The investigator confirmed to Mrs H and SJPWM that the case would be referred to an ombudsman to decide. I'm sorry that it's taken longer than we'd have liked to reach this final stage of our process.

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.

Mrs H has made detailed comments and observations in support of her complaint, all of which I've read and carefully considered. I'm not going to comment on everything, only what I regard as central to the complaint. I can see Mrs H feels very strongly about what's happened and that SJPWM's advice and service was deficient. I agree there were shortcomings on SJPWM's part. And I think SJPWM's offer indicates that it accepts there were failings, at least in respect of the provision of ongoing advice and annual reviews. But, in the main, I agree with the investigator's views and the reasons he gave as to why SJPWM's offer is fair and reasonable.

I think the central issue is suitability – whether SJPWM's initial advice was suitable for Mrs H and if the recommended portfolio remained suitable for her. In considering that I'm not looking at things with the benefit of hindsight. There are many different investment products, funds and strategies. Some will do better than others. Provided SJPWM's advice was suitable, SJPWM won't be responsible for any investment losses Mrs H has sustained and even if another solution might have worked out better. That said, a central aspect of the complaint is that there was a failure to advise and there's an admitted failure to undertake annual reviews. So I've considered what would've likely happened had those reviews taken place and, in particular, if changes to Mrs H's portfolio should've been recommended.

Before considering suitability, I've looked at some of the other issues Mrs H has raised. I think that gives some context to the complaint and her dissatisfaction generally with SJPWM's service or lack thereof.

Mrs H says a crucial aspect of the original advice was for SJPWM to help her consolidate her pensions, which included deferred benefits in two final salary occupational pension schemes, into one SIPP. As the adviser was aware, she'd got a CETV (cash equivalent transfer value) from one of those schemes and she'd taken independent advice. So she was ready to go ahead with that transfer. I think the adviser's position on transferring was set out in the suitability report dated 28 February 2017. It recorded that Mrs H had deferred benefits in two final salary pension schemes which the adviser wasn't recommending be transferred. The report noted that, for one of those schemes, Mrs H had passed the normal retirement date and the trustees wouldn't offer a transfer value. So transferring the value of Mrs H's benefits in that scheme wasn't an option anyway.

A CETV had been offered on the other scheme but the report said it was relatively small and transferring wouldn't be appropriate due to the cost of the transfer analysis and advice fees as well as foregoing the small but rising guaranteed income each year. I don't think that translates as saying a transfer would be too complicated and/or time consuming. The adviser's view was that transferring wasn't justified on cost grounds and as it would mean giving up a guaranteed and inflation proofed income. The earlier suitability report dated 14 December 2016 said Mrs H planned initially to access her final salary pension schemes. So it would appear that retaining those was part of Mrs H's overall retirement strategy.

And, as the investigator said, If Mrs H didn't accept what the adviser had said about not transferring, she could've told him that she wanted to go ahead (at least with the transfer where a CETV was on offer) and asked him to facilitate a transfer. Mrs H didn't press the point. I don't think the adviser acted unreasonably by assuming Mrs H agreed a transfer wasn't in her best interests.

I've considered Mrs H's comments about the documentation. It's clear she thinks it would've been preferable had a client agreement letter been supplied, setting out the different types of client and/or service which could be provided and which one applied to her. But, as the investigator noted, there's no regulatory requirement to provide a client agreement letter. A firm must provide the customer with certain information which was contained in the '*Key Facts about our Services and Costs'* document.

There's a dispute about whether Mrs H got it. The covering letter to the suitability reports lists the documents which have been provided to Mrs H, including that one. So, on the face of things, a copy was provided to Mrs H. The document describes the products offered, the cost of advice and the terms of business. Those are important issues which I think Mrs H would've wanted to be clear about in deciding whether to set up a Retirement Plan with SJPWM. If she didn't get the document and didn't point that out, the adviser couldn't have known Mrs H hadn't seen it. I think it was reasonable for him to proceed on the basis Mrs H did get a copy and was happy to continue as set out.

The document said, amongst other things, that Mrs H had been classed as a retail client. And that the service provided was '*Restricted advice*'. Advice and a recommendation would be provided after Mrs H's needs had been assessed and only products from a limited number of companies were offered. I note what Mrs H has said about not understanding what all that meant and in particular that changes to her investments could only be made on her specific instructions. But, if she'd have queried things, the adviser could've explained. I'd also agree with the investigator that any suggestion there was a DFM arrangement in place would've been made very clear. And, given that Mrs H has expressed unhappiness

that SJPWM sold units to pay the AMC, I'm not sure she'd have been comfortable with a discretionary service – that is where she wasn't consulted about any fund switches.

All in all I agree with the investigator that Mrs H reasonably ought to have been aware that the adviser wouldn't act other than on her instructions. But I'm not sure anything much turns on this point anyway and when the issue is whether, if she'd had ongoing advice, fund switches or other changes should've been recommended. I've considered that below.

Mrs H has said the Retirement Plan terms and conditions weren't provided until 29 December 2016, by which time her contribution had already been received by SJPWM. Again, the covering letter for the suitability report indicates a copy of the terms and conditions had been provided. I don't have any real reason to think that wasn't the case. And if not Mrs H could've asked for a copy. I agree the schedule could only have been produced after receipt of the contribution. But a copy of the terms and conditions could've been provided earlier. I think it's usual practice for a further copy with the schedule to be issued once the investment has been made.

Mrs H suggests, if there's any dispute that she didn't receive the terms and conditions until after SJPWM had received the contribution, further evidence should be sought. I agree the terms and conditions are a key document and include important information about how the product operates. And, along with other documents, form the basis of Mrs H's contract with SJPWM. Sometimes a contract may be void or its terms (or certain of them) unenforceable if there's a failure to disclose material information. But that won't always be the case and a contract may be ratified after the event, sometimes by the parties' conduct.

Even if Mrs H only got a copy of the terms and conditions on 29 December 2016, she still had sight of them at an early stage. She could've queried anything she didn't understand or wasn't prepared to accept. I think it would've been possible to 'unwind' things at that stage – the Retirement Plan could've been cancelled and Mrs H's contribution returned. Mrs H didn't raise any concerns and was apparently happy to proceed. I don't see any reason to say she isn't bound by the terms and conditions. I don't think it would be fair and reasonable to say SJPWM isn't entitled to rely on the terms and conditions. Against that background I don't see there's any need to make further enquiries to try to ascertain whether the terms and conditions had been provided earlier and before the contribution reached SJPWM.

A number of issues arise in connection with the terms and conditions. For example, Mrs H says the EWC and its operation wasn't correctly described. The suitability letter dated 14 December 2016 mentioned the EWC. And the EWC is dealt with in the terms and conditions. I appreciate Mrs H's point is that she didn't get the terms and conditions until he'd already invested but I've dealt with that – she did get them early on and I think she's bound by them.

Condition 10.3 refers to an EWC being deducted on any withdrawal (including the transfer of the retirement fund to another scheme) within six years of the investment date of any '*Investment*'. The definitions section (Appendix 1) defines *'Investment'* as meaning any single contributions, regular contributions or transfer of benefits into the Retirement Plan. And there's a table setting out the EWC percentage that will apply, depending on the years since the investment date. I don't agree there was any failure to inform Mrs H about the EWC or that she shouldn't be bound by it.

Mrs H is also concerned about fees being taken monthly by selling units. Section 10 of the terms and conditions deals with charges. It refers to the costs of managing and maintaining the investments and says that 0.75% of the AMC is allowed for in the prices of the funds and taken each time a fund is priced. The remaining 0.5% is taken by cancelling the required number of units allocated to the investor's plan. Mrs H has said her expectation was that any fees would be taken from the cash account (and there wasn't one) but I think SJPWM did

enough to make Mrs H aware of what fees she'd be charged and how they'd be paid. The fees were also disclosed with the suitability reports and the illustrations.

I've seen some examples of the annual Wealth Account statements. They did set out the overall fund value and what that had been the previous year so to that extent performance could be tracked. But I agree with Mrs H that it's not easy to see how individual funds have performed. I think the position was also confused by name changes to some funds. It seems SJPWM informed Mrs H of those and other changes to some funds although she doesn't recall receiving all the letters/emails. I accept the letters were sent even if for some reason Mrs H didn't receive them. And using the wrong fund names at times on the Wealth Account statements won't have helped either.

But, in my view, Mrs H's concerns about the adequacy of the information provided largely fall away given that it was up to the adviser to review Mrs H's portfolio with her at least once a year. At the outset the need for regular reviews as an important part of the service offered was stressed. The adviser has said he assumed there were no '*burning issues*' on Mrs H's part, otherwise she'd have got in contact. And he's pointed to how things had been left. But I don't think that's good enough. As the adviser accepts, he should've been more proactive and, when Mrs H didn't respond to his emails, followed things up.

It might've occurred to Mrs H that her pension hadn't been reviewed for some time and she could've asked for a review. And information about some of the funds may have been available had she undertaken her own research. Online access might have helped too. Further, it's clear her husband has considerable knowledge and expertise. On that point, although Mrs H was unhappy with the reference to her husband having been a stockbroker, she did say, in her letter of 18 February 2021, that she was married to a former stockbroker. But, that aside and regardless of what other resources or information Mrs H could access, she was SJPWM's client and she was paying the adviser to look after her pension fund. I don't think she got the service she'd been promised.

I'll turn now to what I see as the central issue - the suitability of Mrs H's SIPP portfolio. I've looked first at the initial advice in November 2016. Mrs H's Retirement Plan fund was then just the £48,000 gross contribution she'd be making. The recommendation was to spread that over six medium risk rated Funds. Mrs H's ATR had been assessed as medium. So, by definition, the portfolio would appear suitable for her. That said, in my view, the high equity element meant it was perhaps towards the upper end of what I'd regard as suitable for an investor with medium or balanced ATR. But there was some fixed interest and cash and diversification across a range of funds and different sectors. I think her circumstances and objectives were such that she could afford to take that level of risk with that part of her pension provision.

Mrs H also had considerable input into the portfolio. I've seen the adviser emailed a draft portfolio on 8 December 2016. Mrs H replied the same day, saying she was 'unenthusiastic' about it. The adviser emailed again on 9 December 2016 suggesting a meeting and in the meantime adding further details about the portfolio he'd proposed, including that the UK Equity Fund was managed by Neil Woodford. I mention that because Mrs H has said she didn't want any funds managed by him. But it seems she was made aware and agreed to the UK Equity Fund. I'm also aware of the issues that arose with another Woodford fund – the Equity Income Fund. But my understanding is that Fund wasn't offered by SJPWM and wasn't included in Mrs H's portfolio. SJPWM did remove Mr Woodford as the manager of its UK High Income, UK Equity and UK Income Distribution Funds. Mrs H has referred to what she terms the former UK High Income Fund but I don't think she was ever invested in that Fund although I think it merged with the UK Equity Fund which Mrs H was invested in.

Mrs H has stressed she wanted a focus on income. I've looked at that further below. But I agree with the investigator that the portfolio that was initially recommended was suitable for Mrs H. It was consistent with her stated investment preferences, her ATR, her circumstances generally and when the timeframe for investment was anticipated to be at least five years.

SJPWM gave further advice 28 February 2017 to transfer Mrs H's existing personal pension into her Retirement Plan and invest across the same range of funds and in the same proportions. Mrs H did want, where possible, to consolidate her pension funds. I think the recommendation to transfer was suitable. And, in the absence of any change in Mrs H's circumstances, objectives or ATR, the fund selection remined appropriate.

When the two further contributions to the Retirement Plan were made in December 2017 the recommended funds were different. Three new funds were introduced to Mrs H's SIPP portfolio. Two of those funds – the Global Smaller Companies Fund and the Global Emerging Markets Fund – had a risk rating of high. And the third – the Japan Fund – was upper medium risk. Given what I've said about the original portfolio perhaps being on the high side of medium, that might suggest the overall portfolio represented too much risk for Mrs H, whose ATR hadn't changed from medium. But I think there was justification for the funds recommended. The sectors were consistent with Mrs H's preferences and the new funds provided further diversification. It seems they'd been discussed with Mrs H and, importantly, she'd been made aware they were higher risk than her medium ATR and she'd confirmed she was happy to proceed.

Mrs H has said, about the Japan Fund, that it was new and so couldn't be regarded as low priced. But the fact that it was new was recorded in the suitability report. The reference to it being relatively low priced was presumably by comparison with other similar funds in that sector. The report said the same about the Global Emerging Markets Fund. Although Mrs H has since said she doesn't think that Fund was low priced, it seems the view at the time was that it was attractively priced and values should increase, even if that didn't in the end happen. Overall I don't think the further recommendations were unsuitable for Mrs H.

No further recommendations were made. Mrs H didn't seek advice about any further contributions to her Retirement Plan and she didn't get the annual reviews the adviser had agreed to provide and for which Mrs H was being charged. Discussions about the portfolio's overall ongoing suitability and individual Fund performance should've featured in the annual reviews. I've considered, if annual reviews had taken place, if changes should've been recommended.

Mrs H's time horizon for the portfolio recommended was medium term (at least five years). I don't necessarily agree it's highly unusual for no changes to a portfolio to be recommended over a period of some years. Particularly if, as here, there was no change in the investor's circumstances or objectives. In those circumstances I'd expect the portfolio to remain broadly suitable.

Some funds will perform in line with expectations or better, while others may not do as well as hoped. That, of itself, won't mean that the particular fund wasn't suitable when it was recommended or later became unsuitable. Fluctuations in fund performance and/or values can be expected. Investment conditions over the last few years have been somewhat turbulent and, as pointed out by Mrs H, there have been a number of global and domestic events which have led to economic uncertainty and stock market falls.

Falls in fund values won't necessarily prompt changes. Selling when values are low may crystallise a loss which might be made up if the investment is retained. And, although with hindsight it can be easy to point to a particular time when an investment should've been sold, making that decision in real time is unlikely to be obvious – whether a fund is going to

recover and, if so, when and to what extent or if falls in value will continue is likely to be impossible to predict. So, while I note Mrs H's comments about it sometimes being best to cut losses, I can't say, if that sort of conversation had taken place, that the outcome would've been to sell certain funds.

Mrs H has stressed that her complaint isn't about fund performance and doesn't stem from disappointment with investment returns. Her complaint is that the adviser – the only person with all the facts – failed to notice there were specific failures or changes to the recommended funds such that they no longer met the agreed criteria. He then failed to recommend changes which led to Mrs H suffering financial losses. I've considered, taking into account the issues Mrs H has pointed to, if the portfolio became unsuitable for her.

Mrs H's key point is that she wasn't told when the UK High Income and Global Equity Funds dropped their income mandates. Mrs H says income was very important to her and she'd specifically requested to be highly invested in income funds and three income producing funds (UK High Income, Global Equity Income and Strategic Income) were included (making up 49% of the portfolio). But, as I've explained above, Mrs H wasn't actually invested in the UK High Income Fund – she was invested in the UK Equity Fund. So I don't see what Mrs H has said about not having been told the UK High Income Fund had dropped its income mandate is directly relevant. But even if I'm wrong about that, as I've gone on to explain, I don't think the income mandates were as significant as has been suggested.

The recommendation report noted, about the UK Equity, Global Equity Income and Strategic Income Funds, that the income from dividends and interest would be reinvested, to help provide positive returns when growth was low and to smooth volatility. And that rolling up income generated within the investment would maximise growth potential. The compounding effect together with the capital growth achieved would help target overall capital growth. So the overall investment objective was capital growth ahead of inflation. It seems the income funds were recommended to help meet the portfolio's overall aim of capital growth.

And the email exchange which preceded the suitability report doesn't indicate that income funds were that much of a priority. In Mrs H's email of 8 December 2016 the reinvested income is referred to as 'de minimis' and 'a red herring'. So I don't think any of the Funds would automatically become unsuitable if the income mandate was lost, provided the portfolio retained its overall objective of capital growth.

Mrs H has also expressed concerns about the Strategic Income Fund and in particular that it never achieved a 7% pa yield. But, even if a strong anticipated performance was in part at least the reason for the Fund's inclusion in the portfolio, there was no guarantee as to future returns. Mrs H has also referred to problems with the Fund arising less than six months after she'd invested but I'd be inclined to say that would probably be too soon for things to be reviewed and a longer term view would've prevailed. I note what Mrs H says about the Fund adopting a higher risk strategy than its peers but its medium risk rating seems to have been maintained throughout. So I can't say the Fund became unsuitable for Mrs H because it no longer matched her ATR. Despite what Mrs H says, I think it's more that performance has been disappointing.

I'd say similar about the Japan Fund. I can understand, as it was a new Fund, that Mrs H might say it should've been monitored carefully. But again I don't think it would be wrong to adopt a longer term approach. I don't think it's a foregone conclusion, had performance been analysed during an annual review, that Mrs H would've been advised to switch out of that Fund.

More generally Mrs H has cited the Yodelar review. I agree that it's critical in a number of respects. But SJPWM disputes the findings and has pointed to inaccuracies in the report

including as to how charges are accounted for and why the star rating system is biased to generate low scores. So I'm not sure that a great deal of weight can be placed on the report as evidence of unsuitability.

Mrs H is also concerned about the references to Value funds as an explanation for disappointing performance – the Value style funds hadn't performed well and their poor performance had effectively cancelled out the other funds which had performed positively. I can to some extent understand Mrs H's concern as to the introduction of a new term which hadn't previously been discussed as an investment strategy and which was now being cited as the reason for her portfolio's underperformance. But I don't think the fact that some of the Funds can be labelled in that way means her portfolio was or became unsuitable. Or that it evidences an unacceptable drift in style and/or risk.

I've considered suitability above and I'm satisfied the portfolio was suitable. From what I've seen I don't think it became unsuitable. Despite the factors Mrs H has pointed to, the portfolio continued to match her agreed ATR and there were no changes in her circumstances during the period from November 2018 (when a review should've taken place) and March 2021 when she moved away from SJPWM. On that basis it's difficult to say that changes would've likely been recommended.

Mrs H has said she wouldn't have invested with SJPWM at all. She's pointed to a number of what she terms 'red flags' – such as the EWC, selling units to meet the AMC and the non consolidation of her final salary pension schemes. I've already considered those factors. I don't agree that Mrs H entered into the Retirement Plan without having been made aware of how it would operate and the terms and conditions that would apply. My view is that the advice she received was suitable for her and I don't think the Retirement Plan was mis sold. So I'm not going to say that Mrs H wouldn't have invested at all with SJPWM.

Mrs H has said that some of the issues she's raised affect other SJPWM clients. We aren't the regulator and our powers are limited to dealing with individual complaints. It's a matter for Mrs H if she wishes to raise any more wider ranging concerns direct with the regulator.

All in all I think SJPWM's offer is fair and reasonable taking into account that I'm unable to say Mrs H has suffered any financial loss resulting from SJPWM's advice or failure to advise and when the original SIPP portfolio was and remained suitable for her. I think the offer to refund fees is fair and reasonable. I also take into account that SJPWM met the higher transfer value quoted. And I think the amount offered for distress and inconvenience is at least as much as I would've awarded. So I don't think SJPWM needs to do anymore. I realise that Mrs H is unlikely to agree but I hope I've explained why I'm unable to uphold her complaint to the extent she seeks.

My final decision

St James's Place Wealth Management plc has already made an offer to pay £1,931.71 to settle the complaint (which is in addition to the £2,939.76 it paid earlier). I think this offer is fair in all the circumstances.

So my decision is that St James's Place Wealth Management plc should pay Mrs H £1,931.71.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 30 March 2023.

Lesley Stead

Ombudsman