DRN-3869293

Financial Ombudsman Service

The complaint

Mr O says the advice given and the arrangements made by St. James's Place Wealth Management PLC (SJP) to switch his two occupational money purchase plans and a personal pension into a Retirement Account were unsuitable.

What happened

The advice Mr O complains about was provided by the firm William John Peoples which is an Appointed Representative (AR) of SJP. As the principle firm, SJP is responsible for any acts and omissions of its AR. For simplicity, I will refer to SJP in my decision.

Mr and Mrs O had been a client of their adviser for many years, both when he was with a previous firm and later when he joined SJP. Records suggest their involvement with SJP began around 2015. They received advice in respect of their joint and individual financial interests. They received advice across a range of different financial products including on savings, investments, protection policies and pensions.

Mr and Mrs O brought a complaint to this Service which encompassed all advice they'd received from SJP since the beginning of their relationship with the firm. Where appropriate, separate cases have been set up for each discreet episode of recommendations they were provided with, and according to who was being provided with that advice. So, to be clear, this decision only covers the advice Mr O received from SJP in 2019 about his retirement planning.

It's recorded that Mr O had meetings with SJP in March, July and August 2019 at which his retirement provision was discussed. Information about his circumstances, objectives and attitude to risk were captured.

According to the fact find, Mr O was 57, married with two financially dependent children. He was employed as an engineer earning £25,000 a year. Total monthly net household income was recorded as £2,530. Total monthly household essential and discretionary expenditure was recorded as £1,500. He and his wife also had life assurance and critical illness cover.

Mr and Mrs O owned their home, which was said to be worth £200,000. They had no liabilities. Mrs O was said to have investments of around £185,000. And they held around £67,000 in cash deposits, some of which it's recorded they anticipated might be required to help with their sons' education and housing costs.

It's recorded Mr O expected to retire when he was 65. He had two paid up occupational money purchase plans and a paid up personal pension. He was also a member of his then employer's group stakeholder plan. SJP's advice focussed on his paid-up funds. His Standard Life pension had a transfer value of around £45,400, his Aviva plan had a transfer value of about £7,700 and his Scottish Widows plan had a transfer value of approximately £2,900. Aside from any state pension entitlement, Mr O had no other provision for retirement.

Mr O's objectives were recorded in the following terms:

"During our discussions, we spoke in depth around your objectives regarding our retirement planning. We agreed your overall objectives were to:

- *Invest for your retirement.*
- *Access ongoing service and advice.*
- *Utilise the St. James's Place Investment Management Approach.*
- *Consolidate your pension arrangements."*

SJP produced a suitability report for Mr O dated 17 September 2019. It recommended he switch his three paid up pensions into an SJP Retirement Account. And that he should make net monthly contributions to it of £280. It set out it's rationale in the following terms:

"You did not wish to fund for a specific target income but preferred to make contributions that you consider to be affordable. In making a personal monthly contribution of £280 will result in a gross contribution of £350 per month once the 20% Income tax relief from the Government is added."

"Allowing for your other arrangements, the recommended level of contribution is unlikely to be sufficient to meet your needs in retirement and so we need to regularly review the level of your funds and the contributions you can make…"

"My recommendation is based on your needs and objectives…The St. James's Place Retirement Account will allow you to accumulate funds for future benefits. In line with your plans for retirement you are able to access these funds at age 65."

"You will receive the service and ongoing advice that I am able to offer. I believe this will be of benefit to you in the future because in line with your objectives, you will be able to direct any queries and receive ongoing advice from myself of which is important to you for reassurance and confidence in my trusted advice."

"By utilising a St. James's Place Retirement Account, you will have access to the St. James's Place Approach to Investment Management. This forms a central part of my recommendation because this will provide regular ongoing management, monitoring and changing of the fund managers if necessary. The St James's place Approach to Investment Management is appropriate for you because you like the hands-on monitoring of our fund managers and believe that this coupled with the ongoing regular advice and service should help generate greater return within your pension plan."

"As a result of my recommendation the number of providers your paid-up pension arrangements are held with will reduce from three to one. This will achieve your objective of consolidation and be of benefit to you because you really want to pull your funds together for potential better capital growth over the long term. You also want to be able to understand better where your funds are invested through regular face to face reviews as you feel this can only benefit you when the time comes to take the benefits so you will have a good understanding of all the available options to you."

"In summary the potential improvements in flexibility of your investments, service, and investment performance are your key reasons for looking at alternatives."

Mr O signed a declaration on 3 October 2019 to say that he accepted the recommendations. Subsequently the funds from his paid up pensions were switched into his new arrangement with SJP and he started making monthly contributions to it.

On 29 July 2021 Mr and Mrs O complained to SJP about the suitability of the advice it had provided since they had engaged it. In respect of the recommendations it made to Mr O about his retirement planning, he identified several concerns, including that SJP had:

- *Failed to act in his best interest, instead being more concerned with generating fees.*
- *Failed to make him aware that he would be subject to an Early Withdrawal Charge (EWC) when taking his pension benefits.*
- *Failed to investigate whether his pension funds could be rebalanced with his existing providers.*
- *Charged higher fees than would've been applied by his former providers.*
- *Switched him into an arrangement with less fund choice and a restricted fund management team.*
- *Switched him to an arrangement which meant he lost valuable return guarantees that were attached to his Standard Life policy, which was the largest of his former pensions.*
- *Recommended he make additional contributions to his new pension account when it knew this was unaffordable.*
- *Failed to provide him with a suitability report or explain its contents.*
- *Failed to make him aware of the fees applicable to his new pension account, and in particular the EWC.*

Mr O went on to make various allegations about SJP's practices. And he asserted that he would've been better off today had he not switched his pensions.

SJP responded to Mr and Mrs O's complaint on 4 February 2022. In respect of Mr O's complaint about what had happened to his pension arrangements. In rejecting his complaint it summarised its position as follows:

"…I am satisfied [our AR] undertook the relevant comparisons to ensure that the potential benefits of transferring your pensions to SJP to meet your objectives, including that of consolidating your arrangements into one plan for the administrative benefits of doing so were not outweighed by the potential disadvantages, and as such the advice was suitable. I am also satisfied that [our AR's] recommendation was explained to you including the potential drawbacks, and as such you were in the position to make an informed decision to proceed with the consolidation of your Aviva, Standard Life and [Scottish Widows] pensions into a single plan with SJP."

Mr O wasn't satisfied with SJP's response and brought his case to this Service. An Investigator recommended that his complaint should be upheld. He found that the higher charges he was exposed to couldn't be justified by the prospects being offered in the new arrangement. SJP disagreed.

As both parties couldn't agree with the Investigator's view, Mr O's complaint was passed to me to review afresh and to provide a decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Where there's conflicting information about what happened and gaps in what we know, my role is to weigh the evidence we do have and to decide, on the balance of probabilities, what's most likely to have happened.

I've not provided a detailed response to all the points raised in this case. That's deliberate; ours is an informal service for resolving disputes between financial businesses and their customers. While I've taken into account all submissions, I've concentrated my findings on what I think is relevant and at the heart of this complaint.

I'm upholding Mr O's complaint. I'll explain why.

How does the regulatory framework inform the consideration of Mr O's case?

The first thing I've considered is the extensive regulation around transactions like those performed by SJP for Mr O. The FCA Handbook contains eleven Principles for businesses, which it says are fundamental obligations firms must adhere to (PRIN 1.1.2 G in the FCA Handbook). These include:

- Principle 2 - which requires a firm to conduct its business with due skill, care and diligence.
- Principle 6 - which requires a firm to pay due regard to the interests of its customers.
- Principle 7 - which requires a firm to pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.

So, the Principles are relevant and form part of the regulatory framework that existed at the relevant time. They must always be complied with by regulated firms like SJP. As such, I need to have regard to them in deciding Mr O's complaint.

When I consider a case where someone has switched their pension funds, I look at their circumstances at the time. Why were they interested in switching? Were those wants or needs reasonable? And so, should the adviser have recommended the switch?

Each case is different, but I'd expect the switch to be in Mr O's best interests to make the advice suitable. And in this regard, I'd expect to see a comparison was made between his former pensions and the recommended new arrangement.

In 2009 the Financial Conduct Authority (FCA), then the Financial Services Authority, published a checklist for pension switching that I think is still helpful today. It highlighted four key issues it thought should be focussed on:

- *Charges* - has the consumer been switched to a pension that is more expensive than their existing one(s) or a stakeholder pension, without good reason?
- *Existing benefits* - has the consumer lost benefits in the switch without good reason? This could include the loss of ongoing contributions from an employer, a guaranteed annuity rate or the right to take benefits early.
- *Risk* - has the consumer switched into a pension that doesn't match their recorded attitude to risk (ATR) and personal circumstances?
- *Ongoing fund management* - has the consumer switched into a pension with a need for ongoing investment reviews but this was not explained, offered or put in place.

Did SJP meet the regulatory obligations it was bound by when advising Mr O?

I don't think SJP met the requirements placed on it in this case. I'll explain why.

There are several documents relating to SJP's transaction with Mr O that are important to my consideration, these include the fact-find and the suitability report.

SJP recorded the following about Mr O's retirement requirements:

"You stated that you're not really sure at this stage exactly how much retirement income you will need to support you and [your wife] in retirement however, you would like to continue living comfortably in retirement as you do now and your objective is to concentrate on building as much as you can towards your retirement over the next 8 or so years. You recognise that your expenses in retirement could be a lot less than they are now, that said you would like to build up as much of a pension pot as possible within your affordability so you are able to enjoy and make the most of your spare time."

As the purpose of SJP's advice was retirement planning, I think it needed to probe a little more about what level of income in retirement would be acceptable to Mr O. I can't see evidence of modelling carried out which shows how the advice it gave him in 2019, came together to deliver his requirements.

SJP's role wasn't simply to facilitate what Mr O was said to have wanted. Indeed, I think it knew his retirement income aspirations couldn't be delivered by his existing provision. That's why in the suitability report it produced it said:

"Allowing for your other arrangements, the recommended level of contribution is unlikely to be sufficient to meet your needs in retirement and so we need to regularly review the level of your funds and the contributions you can make. Generally, I would recommend you maximise your personal contributions otherwise you may have a shortfall in your retirement planning when you come to retire in the future."

SJP's role was to have analysed, tested, challenged and advised Mr O about what was in his best interest for retirement planning. It knew about his circumstances and what was realistic. It knew pension pots built up over many years are to provide for a retirement income.

So, I think there's a weakness in the approach SJP took with Mr O in its retirement planning. I'll now consider the relevant specific aspects of pension switching that the FCA has previously highlighted as worthy of particular focus.

In responding to the Investigator's view, SJP acknowledged the new arrangements it put in place were more expensive than Mr O's former arrangements. It told this Service:

"We accept the SJP plan had higher charges and less funds & fund management teams, compared to the ceding schemes, and this was detailed in the suitability letter. However, once the Partner applied special terms to bring the case within acceptable limits (in line with our own internal advice guidance) it had the effect of reducing outperformance to 0.66% p.a. The outperformance result factors in all our charges (inclusive of the ongoing advice charge of 0.5% p.a.). The client did not have access to advice where he was, so can only see this as a benefit for him at that time, when he is nearing retirement and needs to ensure he is on track with his retirement plans."

"*If we take out the 0.5% p.a. ongoing advice charge from the equation (which would make it more of a like for like comparison – i.e. pensions with no access to ongoing advice) the overall outperformance of 0.66% p.a. would reduce to 0.16% p.a. The difference in charges is therefore minimal and I can understand the benefit to the client to accept a slightly higher charge for the benefit of the SJP Approach to investment and consolidation of 3 pension plans. As the transfers were estimated to total £56,067.22, the 0.16% p.a. charge differential would equate to £89.70 in the first year. I don't see this as significant enough to make the*

client change his mind about transferring. I don't believe a term of 8 years is considered short investment horizon to make up additional growth of 0.16% p.a."

Even if I accept SJP's analysis of the various fees and charges it was making and the comparison with what Mr O previously had in place - and I'd observe that these weren't as clear in the suitability report as they might have been - the inescapable fact is that the new arrangement was more expensive.

I accept what SJP says about the advantage of having ongoing advice to ensure Mr O remained on track with his retirement plans. Unfortunately for it, as I've already identified it's unclear from the available evidence what that plan was. And had he remained with his former providers he wouldn't have incurred adviser costs.

In order to exceed the drag of increased costs and then provide an improved return on investment, there needed to be a reasonable prospect of performance improvement under the new arrangements. Remember, a significant element of Mr O's provision had previously benefitted from a guarantee of 4% annual growth.

I can't see that Mr O was effectively informed by SJP about how his former personal pensions had been invested and the fit with his risk appetite. There's nothing about the performance of his pensions over different time horizons. Further, I've not seen he was provided with information about the yield being targeted by its new arrangements. And it follows there's no effective comparison between the pensions.

So, SJP hasn't done enough to satisfy me there was a clear potential for Mr O to be better off in his new arrangement compared to his previous personal pensions. It seems part of SJP's strategy was for him to take on more risk in order to achieve higher growth. I'll now consider this aspect of its advice.

SJP said the following of Mr O's attitude to risk:

"…we agreed you are a Medium Risk investor on our risk spectrum. You want your capital to keep pace with inflation and are investing for at least five years. You want the potential to achieve better long-term returns and are comfortable with most of your capital being invested in equities and property, some of it overseas. You realise there may be significant falls in the value of your investments."

On the face of it, SJP's assessment appears reasonable, given the moderated risk assessment process it had been through with Mr O. It seems he wasn't without some knowledge and experience of investment.

Nevertheless, when I consider risk appetite I also think about a customer's capacity for loss. It's unfortunate that we don't know what level of income Mr O was aiming for in retirement, which at the time was about 8 years away. But I think we have a sense from commentary that he wanted to maintain a comfortable existence and make the most of his life after work.

Mr O had a relatively small pension pot. As SJP itself had identified, this was insufficient to meet his needs in retirement. While he and his wife had other savings and investments, these were relatively modest and it seems they were preparing to give their sons some financial support.

Taking these matters together, it's reasonable to conclude Mr O had low capacity for loss. Yet SJP was advising him to increase the exposure of his whole pot to risk. On balance, I don't think this was appropriate, especially given the valuable guarantees attached to a significant element of his Standard Life pension. Broadly, the risk profile of the personal

pensions he'd switched out of were cautious/medium risk, and I think that was appropriate for his circumstances.

There were three main advantages indicated by SJP for Mr O switching his three paid up pensions.

The first was so that he could consolidate his retirement funds into one account, with the potential for better capital growth over the long-term. But we know the new regime was more costly, so it had to perform better than his previous plans. It didn't provide an effective projection showing whether this was realistic. I agree with the Investigator when he concluded the remaining argument about easier administration didn't justify the switch on its own.

Secondly, SJP noted Mr O would have access to its approach to investment management. This involved, regular ongoing management, monitoring and changing of the fund managers if necessary. However, his existing pensions would've benefitted from ongoing management. While the investment philosophy of each provider may've been different, as it noted there was no guarantee the new arrangements would deliver better performance.

Thirdly, SJP noted the importance on ongoing advice. I've already mentioned the modest size of Mr O's pension pot. Although, I note that he has since put in place alternative adviser services. That would suggest he desired some input to his pension arrangements.

SJP's recommendation for Mr O to switch his three paid up pensions into a Retirement Account was a marginal call. The problem it has is that it needed to demonstrably show the transaction was in his best interests, and it hasn't managed to do that. Indeed, in its own suitability report it listed several disadvantages, including:

- *Higher charges*
- *Fewer funds to invest in*
- *Fewer fund management teams*
- *Loss of smoothed returns for with profits funds (with Standard Life)*
- *Early withdrawal charges*
- *Loss of guarantees (with Standard Life)*
- *Loss of life styling strategy (with Aviva)*

Given the proposal to switch Mr O's pension was at best marginal, I've concluded SJP should've advised him to remain with his existing pension providers.

Part of Mr O's complaint related to the additional contributions he was advised to make to his pension. He says it was unaffordable and had to cease payments after just six months. SJP says the advice was given in good faith, based on information he had provided about his circumstances.

I think there were some deficiencies in the fact-find SJP completed, for example it didn't secure a detailed breakdown of Mr and Mrs O's expenditure. However, I've no reason to believe the recorded monthly disposable income was so wrong as to mean the proposed pension contribution was unaffordable. They appear to have had a reasonable level of headroom in the household budget and substantial savings (albeit some of these appear to have been earmarked for the support of their sons).

In most circumstances it is good advice to maximise pension contributions. We know Mr O had a small pension pot. He was heading for a position where it seemed likely based on available evidence he'd have insufficient provision in retirement. And making pension contributions is a tax efficient way of using available funds. I've not seen anything that makes me think SJP's advice in this regard was unsuitable. I'm not upholding this element of Mr O's complaint.

Putting things right

I'm upholding Mr O's case. So, he needs to be returned to the position he would've been in now - or as close to that as reasonably possible – had it not been for the failures which I hold St. James's Place Wealth Management PLC responsible for.

If St. James's Place Wealth Management PLC had provided suitable advice, I think it's more likely than not Mr O wouldn't have switched his two occupational money purchase and his personal pension into the SJP Retirement Account.

Mr O switched from his SJP Retirement Account to another provider in May 2021. I understand he made around 6 monthly contributions to his SJP pension when it was in place. I think he would more likely than not still have made these payments to a personal pension. These matters need to be borne in mind when calculating redress.

So, St. James's Place Wealth Management PLC needs to provide redress as follows:

- Compare the performance of Mr O's SJP pension with the notional values if benefits had remained with Standard Life, Aviva & Scottish Widows up until the date he transferred his pension to another provider.
- Mr O has made further contributions to his pension. I'm not aware if he's taken any benefits. After confirming the detailed position, then the value SJP obtains or the calculations it makes should assume these adjustments would still have occurred and on the same dates.
- The adjusted, as appropriate, like for like difference between the notional value of Mr O's former personal pensions and the actual value of his SJP Retirement Account will be his basic financial loss that needs to be redressed.
- If the actual value is greater than the notional value, no compensation is payable. If the notional value is greater than the actual value, there is a loss and compensation is payable.
- If it isn't possible to obtain information in relation to the notional value of Mr O's previous plans, it should use a hybrid benchmark to reflect his cautious/medium risk profile. To do this, SJP should use a 50/50 split of (i) the FTSE UK Private Investors Income Total Return Index and (ii) the average rate from fixed rate bonds. To arrive at the *fair value* when using the fixed rate bonds as the benchmark, it should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. And apply those rates to the investment on an annually compounded basis.
- I'm satisfied this is a reasonable proxy for the type of return that could've been achieved if Mr O's pension funds had they remained with his former providers. I consider he was prepared to take a small level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mr O into that position. It does not mean he would've invested 50% of his money in a fixed rate bond and 50% in some kind of index tracker investment. Rather, I consider this a reasonable compromise that broadly reflects the sort of return he could've obtained from investments suited to his risk outlook.

- If there is a loss, SJP should add 8% simple annual interest to this from the date he transferred his funds in May 2021 until the date it settles.
- If there is a loss SJP should pay into Mr O's pension plan, to increase its value by the amount of the compensation and any interest. Its payment should allow for the effect of charges and any available tax relief. It shouldn't pay the compensation into the pension plan if it would conflict with any existing protection or allowance.
- If SJP can't pay the compensation into Mr O's existing pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore, the compensation should be reduced to notionally allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr O won't be able to reclaim any of the reduction after compensation is paid.
- The notional allowance should be calculated using Mr O's actual or expected marginal rate of tax at his selected retirement age. It's reasonable to assume that Mr O is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr O would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.
- Income tax may be payable on any interest paid. If SJP considers it is required by HM Revenue & Customs (HMRC) to deduct income tax from that interest, it should tell Mr O how much its taken off. It should also give him a tax deduction certificate in respect of interest if Mr O asks for one, so he can reclaim the tax on interest from HMRC.
- SJP should provide the details of the calculation to Mr O in a clear, simple format.

In addition, St. James's Place Wealth Management PLC should pay Mr O £200 for the distress and inconvenience this matter has caused him.

My final decision

For the reasons I've set out, I'm upholding Mr O's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 2 June 2023.
Kevin Williamson
Ombudsman