DRN-4191894

Financial Ombudsman Service

The complaint

Mr P complains that St James's Place Wealth Management Plc (SJP) incorrectly advised him to make pension contributions he couldn't receive tax relief on. And to transfer an existing pension plan losing a valuable guarantee. He would like compensation for the losses incurred.

What happened

Mr P says SJP advised him to set up a personal pension plan and to pay significant contributions. As his income was mostly from dividends and rental income, he was unable to benefit from tax relief on the majority of the contributions paid. This error was noticed when his SJP adviser retired. Mr P then raised concerns about the advice he'd been given to transfer a pension plan from Phoenix Life in March 2020.

SJP agreed the advice to pay the contributions hadn't been correct and it refunded them. It said it would compensate Mr P for lost investment growth and the tax costs of around £50,500 he'd incurred drawing dividends to pay contributions. It offered £250 in compensation for the inconvenience caused. Mr P's accountant said HMRC penalties were likely and should also be covered. SJP considered this and Mr P's complaint about the transfer.

SJP sent a final response covering both complaints. It agreed to cover HMRC interest and penalties and increased the compensation offer to £750. It said the lost growth on the refunded contributions was £441.69. It offered Mr P a total amount of £51,529.69.

But SJP said the advice to transfer the Phoenix plan was suitable for Mr P. It said whilst the plan had offered a guaranteed annuity rate (GAR) he'd told the adviser he didn't intend to draw any income from the plan. As his current and ongoing income exceeded his requirements. Instead, he would most likely leave the pension plan to his children. SJP said whilst the charges of its plan were higher it offered more investment choice with the potential for superior growth, and ongoing advice which Mr P had wanted.

Mr P didn't agree and referred his complaints to our service. He said SJP's acceptance form required him to agree full and final settlement of both complaints.

Our investigator looked into the complaints, and he upheld them.

He said as well as refunding the contributions SJP should reimburse any related expenses including HMRC penalties. He said the £750 compensation offered was fair in the circumstances.

In respect of the transfer advice our investigator didn't agree the loss of the GAR was irrelevant. He said the FSA's Conduct of Business rules (COBS) explained that the starting off point for advising on a transfer where there were guaranteed benefits (called safeguarded rights) was that it was unsuitable. Unless it was clearly *"in the client's best interests."* He said SJP hadn't recorded any financial objective warranting giving up the guarantee offered by

the Phoenix plan. And that the objectives recorded were generic and vague, most of which could have been met without transferring the plan.

Our investigator said at the time of the advice, the income available at age 65 from the Phoenix GAR was 1.787 times more than current annuity rates. And even SJP's suitability letter said the transfer value offered poor value for money. He said the SJP plan was more expensive. And the critical yield calculation, showed the rate of growth needed for it to match the benefits of the Phoenix plan was too high. Because of this the transfer shouldn't have proceeded, and the advice was unsuitable.

Our investigator said Mr P should be put back in the position he would have been in had the transfer not been made. He said the Phoenix plan had been set up to age 65 but Mr P could have benefited from the GAR at any age up to 75. So, if Mr P agreed he would've taken benefits at age 65, SJP should undertake a loss calculation to establish the any difference in fund value to the cost of providing the GAR and pay this now. Or it could agree to remain liable for the GAR up until Mr P would have been 75. And if he did take benefits undertake a loss calculation then.

Mr P said he agreed with our investigators view but he didn't express any preference on how redress for the lost GAR should be considered.

SJP didn't agree. It said Mr P had significant and diverse income and capital available to him, comfortably exceeding his living expenses. So, he had sufficient capacity for loss to be able to forgo the GAR. It said as a higher rate taxpayer, it didn't accept he would take taxable income he didn't need. And the outperformance needed to match the GAR was only relevant if Mr P intended to take the guaranteed income, which it didn't *"believe is the case here".*

SJP said Mr P was more concerned about inheritance tax (IHT) and leaving his pensions to his family. It said its plan offered benefits over the Phoenix including:

1. Multiple investment funds compared to one with a *"much more sophisticated investment approach"*
2. That Mr P felt "*could improve the potential for future growth."* Which was "*understandable"* when the annual bonuses over the last five years with Phoenix were between 2.5 and 3%
3. It would provide ongoing advice which Phoenix would not
4. That Mr P wished to consolidate his plans and already had a SJP plan

It said Mr P was aware of the benefits he was giving up and that he had reconfirmed his financial planning objectives to his new SJP adviser.

Our investigator agreed at the time Mr P hadn't intended to draw income from his pensions. But that the regulations still required SJP to demonstrate transferring was in his best interests. And he'd given up a valuable guaranteed income and no real identifiable objectives existed to justify the advice to transfer.

SJP didn't agree. It said whilst its charges were higher, this was:

> *"acceptable when the client is looking for a better investment proposition (which will hopefully improve growth prospects), consolidation of pension arrangements ad* (sic) *regular reviews through face to face advice."*

As SJP doesn't agree it has come to me to decide.

My provisional decision

I issued my provision decision on 17 May 2023, I explained the reasons why I was planning to uphold the complaint. I said:

I've considered all the available evidence and arguments to decide (provisionally) what's fair and reasonable in the circumstances of this complaint. Having done so, I'm planning to uphold the complaint.

The contributions paid

SJP accepts Mr P couldn't benefit from tax relief on the majority of the pension contributions it advised he make. It's fair it fully unwinds these, reimbursing any lost investment return, and any costs or expenses incurred, including any HMRC penalties. SJP has offered to do this.

Mr P has said the "lost" personal tax relief he was promised has caused him an investment loss but as this wasn't something that was actually available to him, this isn't the case. And it wouldn't be reasonable for me to tell SJP to compensate him for this.

SJP has calculated the "loss of growth" on the overpaid contributions to be £441.69. I haven't seen a calculation of this and think one should be provided to Mr P. I agree he has been caused inconvenience and think the £750 compensation offered is fair in the circumstances.

SJP's initial offer to refund the tax costs was made in March 2022. Mr P challenged this, and it issued a revised offer in April 2022 including his accountant's costs, any penalties from HMRC and the lost growth figure noted above. This offer was set out in the final response letter also rejecting the transfer complaint. The acceptance form appended to the letter confirmed the offer of £51,529.69 and said:

> *"In accepting this offer, I understand that it is made in full and final settlement of my complaint against St. James's Place and I hereby release and discharge all and /or any claims, rights, demands and causes of action, whether or not presently known to parties, which I have or may have against … and St. James's Place Wealth Management plc in relation to my complaint the details of which are confirmed in this offer."*

The letter provided referral rights to our service for both parts of his complaint. Mr P has said SJP has aggregated the two complaints requiring that he drop both complaints to accept the offer and at this stage I agree. I don't think this was fair. There was nothing to prevent SJP making a clear and separate offer in respect of the contribution complaint.

That means I think Mr P has been deprived of the use of the compensation offered (£51,529.69) on the contribution error. So, I think it's fair that interest be paid on this at 8% per year simple from 26 April 2022, when the offer was made until the date of settlement. SJP should also pay any interest or HMRC penalties that have arisen, which Mr P will need to confirm.

The transfer advice

SJP says the advice was suitable for Mr P as its plan offers advantages, which combined with what it says were his wider financial planning objectives outweigh the loss of the GAR. I disagree. I don't think SJP has demonstrated its advice was in Mr P's "best interests" as required by the regulations. In particular I don't think Mr P was given a clear explanation of

the level of outperformance was required by SJP's funds to match the guaranteed benefits being given up. Without this he wasn't able to fairly assess the merits of the potential for a higher death benefit value versus the loss of guarantees even if SJP did achieve superior "interim" investment returns in the event of his death.

Mr P says he challenged the advice at the time and only proceeded because the adviser insisted it was the best option. SJP says as it wasn't party to the discussions between the adviser and Mr P, it isn't possible to know exactly what was said. But that it was unlikely that the adviser would have deviated from what was put in writing. Therefore, the email the adviser sent to Mr P on 31 January 2020 before SJP formally gave the advice in its suitability report is interesting. This has a subject heading "Phoenix With Profits Pension performance", and said:

> *"Ive attached, as promised, 10 year and 1 year performance against the SJP Managed Pension Fund.*
> *It goes without saying that you can receive potentially far greater performance by transferring to SJP at no cost to you.*
>
> *The pros for moving :- Regular reviews to suit you, remains outside of IHT, greater potential growth, no initial charges.*
> *The cons for moving :- Apart from tax free cash, sliding scale of exit charges over 7.5% per annum @ 6 5 4 3 2 1%*
>
> *The pros for staying :- stays outside of IHT*
> *The cons for staying :- poor fund performance, unknown charges, no adviser contact*
>
> *I hope this makes sense.*
> *Please don't hesitate to get in touch if you have any questions"*

This email was sent after Phoenix had provided details of the GAR on the policy, so I'm surprised that it isn't mentioned as a "pro for staying". This email predates the suitability report by at least two months.

The FCA's Handbook sets out the rules regulated firms must follow in giving advice. In respect of suitability reports the Conduct of Business (COBS) rule 9.4.7R says:

> *"The suitability report must, at least:*
>
> *(1) specify the client's demands and needs;*
>
> *(2) explain why the firm has concluded that the recommended transaction is suitable for the client having regard to the information provided by the client; and*
>
> *(3) explain any possible disadvantages of the transaction for the client."*

In the suitability report Mr P's objectives were identified as being to invest for his retirement, to access ongoing service and advice, to utilise the SJP investment management approach, to consolidate his pensions, and "address your concerns about your existing provider". The report concludes that the analysis done indicates the transfer value "is poor value for money". But recommends the transfer should go ahead. I think the email of 31 January 2020 indicates that the preliminary discussions were ignoring important benefits of the Phoenix plan and seeking to create "concerns about the existing provider" through a misleading narrative.

Even in its response to our investigators view of the complaint, SJP said that the Phoenix plan (with my emphasis in bold):

> *"is a traditional with profits plan* ***designed purely*** *to provide the client with an income linked to the Guaranteed Annuity Rate (GAR) provision included."*

That would be restrictive, but SJP has provided no evidence to support this assertion. Because, the plan didn't only offer the GAR, as it facilitated the payment of a tax-free cash sum. It obviously offered the right to transfer, making any of the flexible retirement benefit options accessible through subsequent transfer if Mr P didn't want to take the GAR in the future.

Mr P's objectives are only vaguely expanded on in the suitability report. I don't think it is made clear why they were important enough to give up the guarantees the existing plan offered. GARs on older plans tend to be much higher than current annuity rates. This is why the benefits are referred to as "safeguarded" and there are additional requirements that the benefits of giving them up be clearly demonstratable.

I think the suitability report provides quite selective information and presents this in a confusing manner. There are warnings that a guarantee will be given up. And that the GAR is higher than prevailing annuity rates, and that it would be "difficult to provide a level of income similar to the GAR sustainably" under drawdown. And that if taken at age 65 funds "would run out at age 80 or age 76 (assuming a significant market crash)". But the report doesn't put this into any context by saying what a significant market crash would be or properly explain what drawdown is compared to a guaranteed income from an annuity.

And there is no direct comparison to the cost of an open market annuity that would provide the same income as the GAR to explain how significant a level of additional annual investment return, or critical yield, was required to match the benefits being given up.

Critical yield calculations were carried out by SJP. These indicate that its plan would need to grow by an additional 8.57% per annum over the Phoenix plan to provide the same level of income at age 65. Suggesting that SJP funds would need to provide average annual returns of over 12% to match the guarantee being forgone on the assumptions used. That's a demanding level of outperformance. A far greater return than SJP was allowed to forecast on its projections. And I don't think it is a level of return that could be reasonably be expected to be achieved particularly considering Mr P's attitude to investment risk, which is described as "medium".

But in the report this information is obscured in a section headed "The Impact of Charges on your benefits" in a table headed "Level of Outperformance Required", where only 8.57% is entered. Immediately beneath this table the report says:

> *"The outperformance shown above is the additional growth your Retirement Account needs to achieve to match the existing funds."*

This maybe a year one comparison but I think it's misleading. It suggests the total additional return required over the period of investment is 8.57% not 8.57% per year. A few paragraphs later the report says:

> *"You understand past performance is no guide to future performance and there is no guarantee St. James's Place funds will outperform an existing provider. Having discussed this in detail, you felt there was a reasonable opportunity for sufficient growth to be achieved and you are willing to accept the risk it might not be."*

From the report, it isn't clear to me that the actual required level of outperformance was clearly explained to Mr P. Or indeed why it was "reasonable" for him to think SJP would outperform Phoenix Life which the report says was discussed in detail. Without these points being clearly set out in the report I don't think Mr P could fairly appraise the merits of the transfer and whether the guarantee was worth giving up.

SJP has argued that Mr P was most concerned about IHT as justification for the transfer and the sole consideration was the potential future capital value of the pension ignoring any income that either plan might produce. I'm not persuaded by this argument. I think this because in the fact find documents the section on "IHT and estate planning" (which is two pages long) has just one entry, noting that Mr P hasn't made a Will. And the suitability report sent to Mr P setting out the advice to transfer is headed "Retirement Planning". On page one it states:

> *"You wanted to focus on Retirement Planning.*
>
> *I made you aware of your other financial planning needs such as Inheritance Tax Planning but this was not a priority for you to discuss at this time."*

And in a section of the report covering other advice areas, IHT matters are addressed with the comment:

> *"you did not wish to discuss these in detail because you feel you are very young to begin addressing this area"*

But even if Mr P was interested in using his pensions for IHT planning that didn't mean it was in his best interest to transfer from Phoenix. SJP's plan offered no IHT advantage over the Phoenix plan and at the time of the advice, Mr P was 57 years old. Under current legislation once over age 75 the tax treatment of inherited pensions is less attractive. Even if Mr P had no current expectation of needing income from his pensions, I think it's reasonable to say that his financial planning requirements would have evolved over time. For example, he might have opted to take income from the pension to free up capital to allow gifts to be made to reduce his estate and so mitigate IHT.

But there is no mention of such considerations in the suitability report or that future legislative changes might make pensions less attractive for IHT purposes. That would have impacted the Phoenix plan equally, but the GAR wouldn't have been lost.

So, apart from allowing access to SJP funds and ongoing advice, transferring offered little the existing plan didn't. The Phoenix plan also provided Mr P with investment diversification, rather than having all (as the adviser had planned to transfer Mr P's other plans as well) his pensions invested in the same managed funds strategy with SJP. These funds might have achieved superior returns than Phoenix's with profit fund and so provided a higher capital value in the event of Mr P's death, which would benefit his children. But there were no guarantees of that, and I don't think a fair comparison was made to what was been given up on the chance it might.

So, considering everything I don't think Mr P has been treated reasonably. I think if a fair comparison of the GAR and the investment returns required to match it had been provided, then Mr P wouldn't have proceeded with the transfer as it is difficult to see how it was in his best interests. It's fair that SJP put him back into the position he should have been in as closely as possible. As he hasn't taken benefits, I asked him about his intentions here. He said having considered the position he would probably have taken the Phoenix benefits at age 65 and would use the additional income to gift to his children.

Putting things right

I said that it was fair that SJP recalculate the loss caused by the incorrectly paid contributions to include all charges, interest, and penalties from HMRC and if Mr P had already settled this liability to pay him interest at 8% per year simple from the date he made payment.

In terms of the transfer advice, I set out how SJP should undertake calculations to establish the if a loss had been suffered and if had been to compensate him accordingly.

I asked both parties to send me any further information or comments they would like me to consider.

Response to provisional decision

Mr P said he accepted my provisional decision and that he hadn't settled the tax liability due to HMRC. He provided a letter from his accountants confirming the current amount owed was £53,388.46, but that there may be further penalties to be determined by HMRC that could fall between £4,373 and £13,120, subject to negotiation.

SJP disagreed with my provisional decision, providing a substantial response, which I will consider 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.

Having done so, I've decided to uphold the complaint.

I've considered the many points raised by SJP in response to my provisional decision. But these haven't changed my mind on the outcome of this complaint.

The transfer advice

I think SJP has repeated points already made. Some are open to interpretation. For example, it states that the GAR was inflexible as it didn't offer a spouse's pension option. That's true, but the fact find notes state that Mr P wasn't married but had a *"partner"* who "*keeps completely separate finances".* Suggesting the availability or not of a spouse's pension wouldn't be a key factor in the analysis required. It said Mr P had told his new SJP adviser he didn't intend to take his pension benefits at any point. But it omits to note that the new adviser also thought the advice to transfer was unsuitable, in part because Mr P was relatively young.

Instead of addressing every point made by SJP I will focus on what I consider to be the key aspects as to why the advice wasn't suitable. It argues it undertook a fair analysis of the transfer, but the overriding factor was that;

> *"the client had already advised he did not have a need for the income from this plan and therefore would not be reliant on the GAR in retirement"*

So, as Mr P had already decided, it was merely accommodating his wishes and the suitability letter contained multiple risk warnings. But as his plan contained safeguarded rights (the GAR) it wasn't possible for him to transfer it without taking financial advice. And SJP was required to make a suitable recommendation, acting in the clients *"best interests"*

and to communicate with them "*in a way that is clear, fair and not misleading*". It couldn't simply process instructions. And whilst there were arguments in favour of transfer, I don't think Mr P was given the balanced and contextualised information he required to make an informed decision on the transfer. That means I don't think he was treated fairly.

SJP said our service had decided in its favour in a *"similar"* complaint where safeguarded rights had been transferred. But, as it is aware, our service considers each complaint on its own merits and circumstances. It said the earlier decision had said that little weight should be placed on any *"initial discussions"* predating the key documents of the fact find and in particular the suitability letter which;

> *"aims to bring together all the considerations and explain the reasons for transfer and associated disadvantages in much detail to help the client make an informed decision."*

It said Mr P would rely more on the suitability letter than on brief notes in the email of 31 January 2020, quoted in full in the provisional decision. I agree that the suitability letter is a key document and that contemporaneous records like it are valuable evidence, especially compared to recollections of conversations, which can be inaccurate.

Therefore, it is interesting that in defending what I considered to be shortcomings in the suitability letter (which I don't think brought all the considerations together and explained them), SJP has sought to rely on discussions it thinks would have taken place between Mr P and its adviser. Despite presenting no evidence that these discussions did indeed take place.

The suitability letter itself has two dates on it several months apart having apparently been amended. The dates are 27 March 2020 and 20 June 2020. There is no indication of what the amendments were, and a copy of the original letter from 27 March 2020 hasn't been provided. The suitability letter refers to a discussion on 16 January 2020 . It says its purpose is *"to confirm my recommendation"*. Suggesting the recommendation has already been made. So, I think the email of 31 January 2020 is quite relevant evidence here.

Another important document is the key features illustration. This is dated 27 March 2020. The illustration shows a transfer value of £122,512.00. This was the value Phoenix had provided on 21 November 2019. It isn't clear why a revised illustration wasn't prepared to reflect the *"amended"* suitability letter of 20 June 2020, or indeed an updated transfer value given this was seven months later.

The copy application form SJP has provided was printed on 7 April 2020, but as it hasn't been signed or dated by Mr P, it isn't clear when he completed it. The suitability letter suggests it has already been completed, which doesn't obviously tie in with the date of printing on the unsigned application form. Perhaps it indicates there was a further meeting after 27 March and presumably before 20 June 2020, but no notes of this have been provided. The suitability letter continues that once Mr P has *"agreed"* the recommendation the application would be forwarded for *"processing meaning you should receive confirmation of your investment shortly".*

The suitability letter has a declaration to be signed and dated by Mr P to confirm the contents have been explained and an informed decision made by him. But this hasn't been signed or dated. SJP hasn't otherwise confirmed how Mr P *"agreed"* to proceed with the recommendation. Surprisingly it made no reference to this apparent omission in its final response to his complaint, despite quoting the contents of the suitability letter at some length and enclosing a further copy of it.

And despite arguing a full analysis of the merits of transferring was carried out, SJP has now made a clarification over the death benefit position of the Phoenix plan. It says the suitability letter had incorrectly stated that it had offered a return of fund (i.e., the full value) on death, when it did not. Instead, it offered a return of contributions paid plus interest. This information was provided by Phoenix before the suitability letter was produced.

It's likely that a death benefit based on contributions plus interest would be less than the full fund value of this type of plan. So, this would be a potential benefit of transferring. It's the type of factor I would expect to be considered when evaluating the merits of a transfer. But transferring a plan with valuable guarantees isn't the only possible solution to concerns about death benefit values. That this wasn't considered correctly re-enforces my view that SJP's adviser had effectively decided the advice would be to transfer at an early stage and made the recommendation fit regardless – as indicated by his pre suitability letter email.

SJP says its analysis did consider important calculations such as the critical yield and a long-term income calculator (LTIC) and these were discussed with Mr P. The critical yield shows the investment return needed to match the benefits being given up. The LITC indicates how long an income equivalent to the GAR could be paid before depleting the funds. Both are complex calculations, the significance of which I think would need some explanation to the non-expert. I think this was important information that should have been in the suitability letter and properly put into context. But the critical yield was omitted from the suitability letter and I don't think the LITC had been fully explained as set out in the provisional decision.

But SJP said it saw *"no reason why this would not have been discussed with the client".* But the LITC is dated 4 March 2020, and the critical yield calculation 27 March 2020, the same day as the suitability letter, which only refers to discussions on 16 January 2020. No evidence has been shown of other meetings where these issues were covered.

SJP says that any investment outperformance requirement was only relevant if Mr P wanted to take income from the GAR *"which he doesn't".* It accepts the critical yield required was *"not recorded in the*" suitability letter. But I think including and explaining this type of information was essential so that Mr P could make an informed decision about what he might do in the future. He might not have understood the true value of the guarantee. Clearly stating the required level of outperformance needed to match the guaranteed benefits would have put them into context.

And SJP was the expert, required to provide suitable advice considering all relevant factors and communicate them "*in a way that is clear, fair and not misleading".* I don't think it did that. And it hasn't clearly demonstrated the advice was in Mr P's best interests as required by the Conduct of Business Rules. So, if he has suffered a loss as a consequence, it is fair that he be put back into the position he should have been in.

The contributions paid

SJP says if Mr P had asked it to separate the complaints to allow him to accept the compensation on the contribution error, it would have. But instead, he'd referred it to our service without giving it the opportunity to do so.

But it was SJP who combined the complaints when Mr P queried the initial compensation offered. It sent a combined response rejecting the transfer complaint and made a slightly modified offer in cash terms. This didn't include any penalties or interest from HMRC despite the letter saying they would be. It would need information about these from Mr P. The cash offer made was in full and final settlement of all complaints. So, I'm not surprised Mr P referred his complaints to our service given there are time limits to do so after a final

response is issued. SJP could have offered to make a payment to address this matter at any point, but didn't.

As Mr P hasn't yet settled the tax liability, he hasn't suffered a loss through being out of funds where it would be fair to make an interest award. So, settling the sum owed to HMRC resolves this aspect of the complaint. However, the final liability here has yet to be determined. If interest is continuing to accrue on the debt it would seem appropriate to settle this promptly pending the conclusion of discussions with HMRC with SJP to make further payment as necessary to avoid any loss to Mr P.

Mr P has also suffered a loss due to loss of growth on the refunded contribution, which SJP has agreed to pay of £441.69.

Putting things right

In respect of the transfer advice:

Mr P says he would have taken benefits at age 65. I think it's likely that he would have taken the maximum tax- free cash sum available – 25% of the future fund value. Phoenix Life has already provided a notional value calculation of the policy for SJP. So, SJP should;

1. Ask Phoenix Life to recalculate the notional value of Mr P's policy on the date of calculation, as if the policy had never been transferred.
2. The GAR available under the plan was a single life annuity, payable annually in arrears without guarantee and the rate applicable at age 65 was 89.98 per £1,000 of purchase price (8.998%).
3. SJP should look up annuity rates on the date of calculation to determine a rate payable on the open market for the same format and age.
4. Assuming (2) is greater than (3), increase the value in (1) by the ratio of 75% x ((2) divided by (3)). Otherwise leave the value in (1) unchanged.
5. Obtain the fund value at the date of calculation of the plan Mr P switched to as a result of the original advice.
6. The loss to Mr P's pension funds at the date of calculation is calculated as the result of (4) – (5). If the answer is negative, there's a gain and no redress is payable.
7. The loss should if possible be paid into Mr P's pension plan. The payment should allow for the effect of charges and any available tax relief. But the compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance. Based on the information available it is unlikely that payment could be made into Mr P's plan.
8. If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr P as a lump sum after making a notional reduction to allow for future 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 P won't be able to reclaim any of the reduction after compensation is paid.
9. As Mr P would have taken tax-free cash, 25% of the loss would be tax-free and 75% would have been taxed according to his likely income tax rate in retirement – I think

it's reasonable to assume this to be 40%. So, making a notional reduction of 30% overall from the loss adequately reflects this.

In respect of the overpaid contributions;

SJP should liaise with Mr P and his accountants as necessary and settle the full liability to HMRC caused by its error as appropriate, including all interest and penalties, including those still to be determined by HMRC. It should also compensate Mr P for his loss of growth of £441.69 it has already calculated on the refunded contribution.

SJP has already offered Mr P £750 for the inconvenience he has been caused which I think is fair compensation in the circumstances of the complaint.

My final decision

For the reasons I've given above and in my provisional decision, my final decision is that I uphold this complaint against St James's Place Wealth Management Plc.

I direct St James's Place Wealth Management Plc to undertake the loss calculations set out above in respect of the transfer advice and the incorrectly paid contributions and pay compensation accordingly.

I further direct St James's Place Wealth Management Plc to pay Mr P £750 compensation for the distress and inconvenience he has been caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 1 September 2023.

Nigel Bracken
Ombudsman