DRN-4846006

Financial Ombudsman Service

The complaint

Mrs C is represented. Her complaint was submitted to us alongside her husband's because the service they complain about was, in the main, delivered to them jointly. However, their respective complaints are being addressed separately. This decision is only about hers.

Her claims are mainly that a St. James's Place Wealth Management Plc ('SJP') partner advised her to open an SJP Retirement Account ('RA')/Pension in 2020, that she followed the advice, that the recommendation was unsuitable, and that she paid for an ongoing advice/annual review service (the Ongoing Advice Service or 'OAS') from SJP/the partner that she did not always receive. She seeks redress for the alleged unsuitable recommendation and a refund of the OAS fees where the associated annual reviews cannot be evidenced – in this respect, it is noted that there was a change of SJP partner in 2022.

What happened

One of our investigators looked into the complaint and concluded that it should not be upheld. More recently, another investigator reviewed the complaint and confirmed he found no grounds to add to the first investigator's findings.

The first investigator mainly said –

- Between August and October 2020, the initial SJP partner conducted financial reviews with Mrs C and her husband.

- Fact find evidence from the reviews shows her profile was as follows – she was in her early 50s, had no financial dependents, jointly owned her home (which had no mortgage), earned £12,000 per year (working part-time), shared a current and savings account with her husband (with a total of around £24,000 in them) and had an emergency fund of £5,000, did not share in her husband's separately held investments, had a Zurich Personal Pension ('PP') worth around £11,000, was assessed as having a medium to upper medium risk profile, and had an objective to invest for her retirement (which she preferred to begin at age 59).

- The partner recommended the RA, an initial £10,000 contribution into it and its investment in SJP funds (as the partner could only recommend SJP funds) – 35% allocated to its Global Growth Fund ('GGF'), 35% into its International Equity Fund ('IEF') and 30% into its North American Fund ('NAF').

- Mrs C preferred to make contributions to the RA as she considered them affordable.

- A Stakeholder Pension was discussed in the course of advice, but it was deemed unsuitable because it did not allow for adviser fees to be paid out of the pension. Instead, they had to be paid from external taxed funds.

- The associated fees were – a 4.50% initial advice fee, a charge of 0.50% per year for the OAS, an initial product charge of 1.50% and an ongoing product charge of 1%

per year. Overall, compared to Mrs C's Zurich PP and whilst acknowledging that no pension transfer or switch resulted in the SJP RA, it can be noted that the SJP RA recommendation was more expensive if it was compared to the Zurich PP. However, it should also be noted that the RA came with the OAS.

- The OAS appears to have been suitable for Mrs C. It does not appear that she sought to self-manage the RA or that she had the experience to do so. For this reason, it is doubtful that if the Zurich PP had a wider fund range, as asserted by her representative, such would have made a difference. Furthermore, both pensions were equivalent to each other, so contributing to the Zurich PP would not have given her any benefits that were not available in the SJP RA.

- In terms of matching Mrs C's medium to upper medium risk profile, there is no evidence that she objected to this risk profile assessment at the time; the GGF and IEF were both considered to be medium risk funds, and the NAF a medium to higher risk fund; this compared to the Managed AP fund in which her Zurich PP was invested, as its fund sheet (publicly available) shows it is considered to be an upper medium risk fund; it therefore does not appear that the fund recommendations for the RA mismatched her risk profile.

- Even though Mrs C was not far from her preferred retirement age at the time of advice (in 2020), contributing towards her retirement was a good idea, and evidence shows that by November 2023 she appears to have invested £44,500 into the RA.

- Evidence also shows the following – as part of a review on 22 November 2021, she was advised to contribute £2,000 to the RA; the same amount was contributed to the RA following review advice on 5 January 2022; review advice on 7 October 2022 was that the arrangement at the time remained appropriate; and £3,000 was contributed to the RA following review advice on 30 August 2023 [after her complaint in May 2023]. On this basis, there is no merit in her claim about not always receiving the OAS.

Mrs C's representative disagreed with this outcome. He said the risk exposures in the GGF, IEF and NAF have been understated and that the Zurich PP's fund has been unfairly discounted. He asked for an Ombudsman's decision. As stated above, another investigator reviewed the case, during which he sought and obtained additional evidence from SJP, but he did not alter the first investigator's findings.

The matter was referred to an Ombudsman.

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 have reached the same conclusions expressed by the first investigator, for broadly the same reasons he gave.

The OAS

The partner's suitability letter to Mrs C (dated 26 October 2020) refers to the OAS. The same reference exists in the SJP pension illustrations issued to her and her husband in 2020 and in 2022. The OAS is described consistently in these documents as a service in which annual reviews (of circumstances and existing investments) will be conducted to ensure they remain

suitable. There was also an associated element with regards to future financial planning. The cost of the OAS was 0.50% per year, and the illustration documents confirm this too.

As I address in the next section, Mrs C's circumstances included the fact – according to available fact-find evidence – that she received dividend income from her part-time employment in the company owned by her husband and her, and that her objective for the RA was based on using employer contributions for the pension. The partner's advice (initial and ongoing) therefore reflected this objective.

Following from the 26 October 2020 recommendation to set up the RA (with the initial contribution and initial fund investments summarised above), there is evidence that –

- The initial employer contribution (of £10,000) was made on 28 October 2020 (based on account activity statements for the RA).

- The partner wrote to Mrs C and her husband on 22 November 2021, referring to a review discussion on 19 November 2021 and to earlier advice he had given them in a letter dated 6 July 2021. A copy of the July 2021 letter appears to have been enclosed for the purpose of recapping on its contents (including references to the couple's circumstances and objectives). The November letter says nothing had changed materially since the July letter. The partner then recommended that Mrs C make an additional £2,000 contribution into the RA, and he said his reasons remained the same as those given in the July letter. The November letter set out a suitability analysis (extending to the fund selections for the contribution) to support the contribution advice. There is account activity evidence, for Mrs C's RA, showing that an employer contribution of £2,000 was made on 23 November 2021.

- The partner wrote to Mrs C and her husband on 5 January 2022, referring to a review discussion on the same date and to the same 6 July 2021 letter. Again, a copy of the July 2021 letter appears to have been enclosed for the purpose of recapping on its contents. The 2022 letter says nothing in their circumstances had changed since the 2021 letter. The partner recommended that Mrs C make an additional £2,000 contribution into the RA, and he said his reasons remained the same as those given in the 2021 letter. There is account activity evidence, for Mrs C's RA, showing that an employer contribution of £2,000 was made on 7 January 2022.

- There is email correspondence from the partner's office to the couple in March 2022, reminding them that their financial review with the partner was approaching "*… in the coming weeks*" and informing them about how to arrange it. This message was issued to them on 7 and 22 March. As stated at the outset of this decision, the SJP partner changed in 2022. Email correspondence from May 2022 refers the couple to their call with the new partner around that time, to attached illustrations and a suitability letter, and to the recommended £2,000 pension contributions. There is account activity evidence, for Mrs C's RA, showing that an employer contribution of £2,000 was made on 16 May 2022.

- The partner wrote to the couple on 7 October 2022, referring to the annual review that had been conducted on their pensions/RAs. The letter says their circumstances were discussed and they remained unchanged since the last review. Current valuations and information on contents were given with regards to each RA. There is also information in the letter about valuations of their wider, non-pension, assets. The letter then reviews their goals, objectives and current investments, before concluding that their existing arrangements remained suitable as they were.

- The partner sent Mrs C a detailed suitability report on 30 August 2023, referring to the discussion they held on the 25th of that month. The document presents a full suitability analysis for her and her RA. The document confirms the RA was worth around £45,000 at the time and that there was an ongoing monthly contribution of £500 into it. The report recommended, with reasons, an additional £3,000 contribution into the RA.

Overall, on balance, and based on the evidence summarised above, I am satisfied that Mrs C was not deprived of any annual reviews in the OAS, so her claim for a refund of OAS fees is not upheld. She appears to have received substantive and meaningful reviews – which delivered the service defined in the OAS (and for which she paid the OAS fees) – every year since opening the RA, and in 2022 she appears to have benefitted from three such reviews. I note that the reviews were mainly coupled with new advice, but the point is that the reviews (of past investments) that she paid for under the OAS happened as they were supposed to.

Suitability

The rules relevant to SJP's/the partner's role and responsibilities, as an adviser, are mainly those in the relevant parts of the regulator's *Handbook*. Its responsibilities to make suitable recommendations to clients and to abide by the 'client's best interests rule' are set out in the Conduct of Business Sourcebook ('COBS') section of the Handbook, at COBS 10/10A and COBS 2 respectively.

Furthermore, the Handbook's Principles for Businesses, at Principles 2, 3 and 6, require, in broad terms, firms to conduct their services with due skill, care and diligence, to make reasonable efforts to manage and control their affairs responsibly and effectively, and to uphold their customers' interests and treat them fairly. There is case law – Ouseley J, in R (British Bankers Association) v Financial Services Authority [2011] EWHC 999 (Admin) – that confirms the Principles are ever present requirements firms must comply with.

As the investigator identified, Mrs C's RA did not result from a pension transfer or switch. It began with an initial and fresh contribution of £10,000, which was invested, before further contributions were made and invested over time. The 2020 recommendation was twofold, first the advice to open the RA and then the advice on how to invest it. In both respects, the partner was obliged to ensure that Mrs C's best interests were upheld, that the recommendation was suitable and that the recommendation met the Principles relevant to it. Overall, on balance, and for the reasons I give below, I find that both aspects of the recommendation achieved these requirements.

There is evidence from the contents of the partner's fact find document that suggests a key aspect of the objectives Mrs C shared with her husband, was a pursuit to use employer contributions towards their pensions – for corporate related reasons and to enhance their retirement provisions.

I have been cautious in considering the document because it does not appear to have been signed or approved by Mrs C (or by her husband), so I cannot say with certainty that she saw it at the time or that she agreed its contents. However, in this and other respects, the document's contents are supported by wider facts and evidence, so for this reason I consider it broadly reliable. Only employer contributions were subsequently made into the RA, which matches the objective indicated in the document. If this was not an objective, the recommendation for such contributions would probably have been questioned by Mrs C, but there is no evidence of that, and if she did not want employer contributions none would have been made, but they were made.

I address this because it allows me to be satisfied, on balance, that Mrs C wanted a pension product into which the employer contributions she (and her husband) sought to make could be made. This was an objective.

The consideration that follows relates to the Zurich PP that she already had at the time, and an obvious question is about why a recommendation to make the employer contributions into that pension was not made.

The Zurich PP's details have been shared with us. There was no recommendation against it or to close it. It continued to exist after the SJP RA was opened, so its benefits were not lost and I do not have to consider them in that regard. My consideration has instead focused on whether (or not) it could or should have been suitable for the employer contributions Mrs C wanted to make – thereby avoiding the costs and efforts associated with opening the SJP RA.

On the face of it, the Zurich PP did not have any characteristic that repelled the notion of using it for Mrs C's objective. It had existed since 1989, so it could be argued that she had deemed it suitable enough to retain it up to 2020.

However, I do not consider that the circumstances under which the Zurich PP had existed up to that point were comparable with the circumstances she presented to the partner at the time. The Zurich PP was paid up, had resulted from contracting out in 1987, had no contributions being made into it at the time, had received no contributions for at least the previous 10 years, was completely invested in a managed fund and was without any connected advisory service.

The October 2020 suitability report says Mrs C's objectives at the time included her aims to invest actively for her retirement and to have an OAS with regular reviews, over a time frame of five to 15 years.

An employer scheme was considered and discounted because her and her husband's company, where she worked, did not have one. As the investigator noted, a Stakeholder Pension was also considered and discounted, because of its inability to facilitate the payment of adviser fees from the pension. Generally speaking, a facility like that can present benefits, where the fees are paid from funds within a pension, as opposed to doing so from taxed funds outside a pension. That can allow the tax relief applied to contributions into the pension's funds to reduce the net cost of the fees paid out of those funds. I can therefore understand why this option was discounted. It would have been in Mrs C's best interests to achieve potential net cost savings by paying adviser fees out of her pension.

The report refers to the Zurich PP. It did not have the associated OAS that Mrs C wanted, and, as an 'SJP' partner, the partner could not provide such a service for a non-SJP product. It appears to me that this meant the Zurich PP was inevitably to be discounted too. The partner's position, as an adviser tied to SJP products, would have been declared in the standard onboarding related information issued to and agreed by Mrs C at the time. If she wanted no more than an independent OAS to accompany the Zurich PP, it is likely she would have sought an alternative to the SJP partner. She did not do that, so it appears unlikely that she wanted that.

Where she had previously left the Zurich PP without contributions for 10 years and in a managed fund without active ongoing advice, she now wanted to make employer contributions into a pension and she wanted active investment of those contributions over time (over the next five to 15 years) inclusive of and led by the OAS. On balance, I am persuaded that she probably wanted a solution separate from the Zurich PP, and that such a separate solution was not automatically unsuitable for her merely because the Zurich PP

existed. It existed, but it did not readily meet the fresh circumstances she presented in 2020, with regards to making active investments with ongoing contributions over time and with an OAS. If it was to meet those circumstances fresh arrangements around it (such as an associated independent OAS service) had to be made, so changes would still have been required and they would have come at a cost. Instead, she looked into the SJP option as an all-in-one option, so to speak, and that was not unreasonable.

The RA should be considered on its own merits.

I have looked into its cost(s).

The effect of the 4.50% initial advice fee can be considered beyond the point of initial advice. Mrs C had a time frame of five to 15 years, but her preferred retirement age was around seven years away at the time of advice. Assuming she retained the arrangement for at least 10 years – which I consider a reasonable point between the top end of her time frame and the number of years to her preferred retirement age – spreading the initial fee over this period results in an annual cost of 0.45%. In addition, there was the 0.50% annual fee for the OAS. The RA illustration document shows that the 1% annual ongoing product charge was effectively waived for the first six years, so a total of 4% (after subtracting the total of 6% for the first six years) would have applied over the 10 years period, or 0.4% per year. The initial product charge of 1.50% equates to 0.15% per year over 10 years. All these fees create a total annual cost of 1.5% for the recommended SJP RA product solution (inclusive of the OAS).

I maintain the finding that the SJP RA was a different solution to the Zurich PP. Mrs C's representative appears to feel strongly that a comparison between the product costs of both has not been properly addressed. I acknowledge, as did the investigator, that the Zurich PP was the cheaper product. However, because I consider it, on its own, not to have been the type of solution Mrs C sought and not to have been the type of solution the RA presented – for the reasons previously addressed – I do not find that this automatically means the RA was unsuitable.

Information from the regulator's survey of financial advisers, published in April 2016 and titled 'FCA survey of firms providing financial advice', says "*the median percentage fee for ongoing advice on investments was 0.5% for investable assets of £50,000 or less*". 0.50% is the rate SJP applied to Mrs C's OAS in 2020, so I consider that it was within reason and that it probably matched the median rate in the market around that time.

The remainder 1% total annual cost, as explained above, covered the initial charges for advice and for the product, and ongoing product charges. Mrs C wanted advice for the particular objectives she held, so that would have come at a cost in any case. In terms of the initial advice fee her representative might argue that 4.50% is unreasonably high. However, the 2016 survey I mentioned above included the following – "*The median initial percentage fee for investment advice was 3% for investments up to £100,000*" and "*In terms of the spread of charges, our analysis showed that the 'middle' 90% of firms charged between 1% and 5% for advice on investments of up to £10,000, and between 1% and 4.5% for advice on investments of between £30,000 and £50,000*". In this context, there appears to be support for the finding that the 4.50% initial advice fee applied in Mrs C's case was not an outlier in the market.

As was the case for the advice she wanted, the product she sought to use also came with costs, and would have done so in any case, so I am not persuaded to find it unreasonable that the relevant product charges applied in her case.

Overall, on balance, and for the reasons given above, I do not find that the annual cost (of

1.50%) to Mrs C of the SJP RA solution was unsuitable.

The next consideration is the suitability of the investments recommended for her RA (initially and during the relevant reviews).

The main problem, as alleged by Mrs C and her representative, with the RA's funds is the exposure to risk within them.

She was assessed as having a medium to upper medium risk profile, and I echo the investigator's observations that she was informed of this in the suitability report and that there is no evidence she objected to the assessment.

Furthermore, the Zurich Managed AP Fund she had in the Zurich PP at the time of advice is consistent with and lends support to the assessment. Information from the fund's factsheets (from Zurich and from external sources like Trustnet and the Financial Times) shows that it had an upper medium risk profile and that it had around 70% exposure to equities (mainly UK, North American, Asian and European equities, but also Emerging Markets equities), along with around 15% exposure to property. The remainder featured fixed interest components, but it is fair to conclude that its majority equities content, the nature of that content, and the level of its exposure to property explain why it had an upper medium risk profile. That was the same profile the partner assessed for Mrs C. It matched the pension investment she already held prior to advice and, on balance, it shows the assessment was/is reliable.

We have been given factsheets, relevant to the different times of advice, for the SJP funds recommended to Mrs C, and I have used them in considering their suitability.

The initial advice recommended a 35% allocation for the GGF, a medium risk fund composed of around 93% equities (UK, European, North American and Asian) and 7% cash; a 35% allocation for the IEF, a medium risk fund with the same type of components as the GGF; and a 30% allocation for the NAF, an upper medium risk fund with over 90% exposure to North American equities and the remainder in European equities and cash. Overall, I consider that the combination and allocation mix of these funds did not mismatch Mrs C's medium to upper medium risk profile, it was broadly in line with that profile.

The November 2021 review recommended that the £2,000 contribution be split over the following SJP funds – 20% in the Emerging Markets Equity Fund ('EMEF'), a high-risk fund; 20% in the Global Value Fund ('GVF'), a medium risk fund with around 95% exposure to equities (North American, European, UK, Asian and Latin American) and the remainder in cash; 40% in the NAF (upper medium risk); and 20% in the Sustainable & Responsible Equity Fund ('SREF'), a medium risk fund that was almost wholly exposed to equities (North American, European, Asian and UK) but had an ethical approach (as denoted by its name).

Overall, I consider that the £2,000 contribution was invested and allocated in line with Mrs C's medium to upper medium risk profile. The EMEF allocation stands out, and I address it further below, but it accounted for only 20%, with the remainder 80% split equally between the medium and upper medium profiles. Even if I considered that this, overall, placed the contribution more into the upper medium risk category, the contribution accounted for around 15% of the RA's portfolio. The majority of the rest was invested in medium risk funds (the GGF and IEF), so overall the RA still remained within the medium to upper medium risk profile.

In June 2022 SJP revised its approach on the EMEF and applied changes to that approach the following month. In its notice to Mrs C (of 22 June 2022) it explained that diversification in the fund's underlying investments will be increased, liquidity will be improved and its

management will also be diversified further (with three additional fund managers). It explained how this was to be achieved and that the purpose included the aim of reducing the fund's exposure to risks. Prior to this, the partner had conducted a fund switch in Mrs C's RA in which her holding in the EMEF was reduced (by a value of almost £5,000) and reallocated equally (in terms of value) across the GVF and NAF.

The fund switch had the effect of reducing, in the context of the relevant value, the RA's allocated exposure to high risks and replacing that element with exposure to medium and upper medium risks. SJP's change of approach for the EMEF meant that any remaining high-risk exposure in the RA (in the remaining and reduced EMEF holding within it) had been, in a sense, diluted to achieve a level of exposure that remained high risk but was not as high risk as it previously was. On balance, I find that both of these events favoured Mrs C's risk profile for the RA.

The October 2022 suitability report shows that Mrs C's RA portfolio had the following value and contents (as of 26 September 2022) – £35,377; around 50% in the NAF (upper medium risk), around 27% in the GVF (medium risk), around 19% in the SREF (medium risk), and around 4% in the EMEF (diluted high risk). I am satisfied that this maintained the required overall medium to upper medium risk profile for the portfolio.

By the time of the August 2023 review and recommendation, the RA was worth around £45,000, and the partner's advice was to invest the recommended £3,000 contribution as follows – 20% in the EMEF (diluted high risk), 40% in the NAF (upper medium risk), 20% in the GVF (medium risk) and 20% in the SREF (medium risk). This too could be viewed as being more in the upper medium risk category, because a total of 60% was allocated to the EMEF and NAF. However, the contribution accounted for only around 7% of the RA's portfolio, so I consider it broadly balanced by the majority of the portfolio (the remaining 93%) reflecting a medium to upper medium risk profile, as addressed above.

Overall, on balance and for the reasons given above, I do not consider that the RA was unsuitably invested or that it was invested in a way that mismatched Mrs C's risk profile.

My final decision

For the reasons given above, I do not uphold Mrs C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 30 September 2024.

Roy Kuku
Ombudsman