Financial Ombudsman Service

The complaint

Mr C is represented. His complaint was submitted to us alongside his wife's because the service they complain about was, in the main, delivered to them jointly. Their respective complaints are being addressed separately, so this decision is only about his.

He says a St. James's Place Wealth Management Plc ('SJP') partner advised him to open an SJP Retirement Account ('RA') in 2020, to make a contribution into it, to invest that contribution and then to transfer into it (and invest) his pre-existing crystallised Hawthorn Life Pension ('HLP'), that he followed the advice, that the recommendation was unsuitable, and that he paid for an Ongoing Advice Service ('OAS') from SJP/the partner which included annual reviews he did not always receive.

He seeks redress for the alleged unsuitable recommendation and a refund of the OAS fees where the associated annual reviews cannot be evidenced.

What happened

One of our investigators looked into the complaint and concluded that it should not be upheld.

In terms of the background, he mainly said –

- Fact find evidence shows Mr C's profile was mainly as follows – he was almost 60 years old, was the Director of his company, had disposable income of around £2,100 per month, had no financial dependents, jointly owned his home (which had no outstanding mortgage), shared a current and savings account with his wife (with a total of around £24,000 in them), had £72,000 in his company account, had an emergency fund of £5,000, had the HLP which was worth around £110,000 (with a set retirement age of 67), was assessed as having a medium to upper medium risk profile, had some investment experience but did not consider himself an experienced investor, and had an objective to invest for his retirement (which he preferred to begin at age 67).

- The partner issued suitability reports to Mr C in August and September 2020. The first recommended the SJP RA, a £5,000 contribution into it and investment of that contribution in SJP funds – 35% in its Global Growth Fund ('GGF'), 35% in its International Equity Fund ('IEF') and 30% in its North American Fund ('NAF'). The second recommended transfer of the HLP into the RA. The report said Tax Free Cash ('TFC') had already been taken from the HLP, that no further income had been taken, that no further contributions could be made into it and that it had a guaranteed plan value of £103,822.06 and maximum guaranteed income (at age 67) of 5.5% of that amount (around £5,700).

- The main reasons for the transfer recommendation were stated as the accumulation of funds for future benefits and the OAS – an improvement on the pre-existing arrangement in which there had been no contact between him and his previous adviser since 2015.

- 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 (waived for the first six years).

The investigator then made findings on suitability of the RA recommendation, suitability of the way the RA was invested, suitability of the HLP's transfer into the RA, and Mr C's claim that he did not always receive the annual reviews in the OAS. He mainly said –

- The RA was established to facilitate the £5,000 contribution. Mr C's objective was to invest for his retirement and the HLP could no longer accept contributions, so the need to open a new pension arose. The fees associated with the RA were not out of proportion, and the solution came with the OAS, which was of benefit to him.

- With regards to suitability of the RA's investments, and in terms of Mr C's medium to upper medium risk profile, the GGF and IEF were both considered to be medium risk funds, and the NAF a medium to higher risk fund; overall, this was different to the Cautious Managed Portfolio ('CMP') into which his HLP was invested; however, circumstances were different; the RA was a new pension and the amount invested in it was significantly smaller than the value that existed in the HLP (where the greater value had guarantees); so it is understandable that Mr C was willing to take some more risk with the RA; overall, the fund recommendations for the RA were not inappropriate for his risk profile.

- For these reasons, neither the RA recommendation nor the funds recommended for it were unsuitable.

- The regulator's 2009 checklist for pension switches prompts consideration of the cost of the switch, benefits that could be lost in the switch, any mismatch between the switch and the individual's risk profile (and personal circumstances), and any need associated with the switch for ongoing reviews.

- The costs of the HLP were – an Annual Management Charge ('AMC') of 0.75%, a fund charge of 0.44%, a Guaranteed Retirement Income Charge ('GRIC') of 0.35% and a 0.5% fund-based renewal commission. The initial charges associated with the transfer meant the solution was, overall, more expensive for Mr C, but waiver of the RA's annual product charge helped to make the ongoing management charges less that those for the HLP. Furthermore, the overall additional expense covered the OAS and the prospect that SJP could deliver better returns.

- The transferred HLP value was invested in the same way as the initial contribution into the RA. This meant more exposure to risk than previously existed in the HLP's CMP holding. The transfer also meant that the HLP's guaranteed pension income would be lost.

- It is not clear that there were good enough reasons, at the time of advice, to justify losing such a benefit in the transfer. However, subsequent performance of the RA and of the value transferred into it from the HLP supports the prospect presented at the time that SJP could deliver returns to match the lost benefit. Valuations of the RA show that as of January 2024 – just three years after the transfer – it was worth

£181,372 and that, within this value, the £107,500 (net) transferred into the RA from the HLP was worth £130,812. This amounts to growth of 21.7%. Mr C is less than four years away from his selected retirement age. Available evidence is that in order to match the guaranteed income under the HLP only 4.4% of the RA's value is needed, and that even modest future returns in the RA would reduce this further by the time he reaches his selected retirement age. It therefore looks like the RA is on course to match, if not exceed, the benefit lost in the HLP.

- Furthermore, the RA gave Mr C flexibility on how and when his benefits were taken.

- With regards to the OAS, evidence shows the following – as part of a review on 22 November 2021, Mr C was advised to contribute £2,000 to the RA; the same amount was contributed to the RA following a review 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 a review on 30 August 2023. On this basis, his claim that he did not always receive the OAS is unsupported.

Mr C's representative disagreed with this outcome and asked for an Ombudsman's decision. Another investigator reviewed the case, during which he 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.

The OAS

The partner's suitability letter to Mr C, dated 28 September 2020, refers to the OAS recommendation and it also said the following –

"***The Need for Regular Reviews***

The decision on whether to continue with Drawdown is an important one which we should, and will, review on a regular basis. It is my recommendation that as a minimum we conduct an annual review of your Drawdown arrangement.

The review will look to consider the sustainability of your Drawdown arrangement and how fund performance, combined with other factors such as any withdrawals being taken and the level of inflation, have impacted on this.

As part of the annual review, should the sustainability of your arrangement be shown to be in doubt, we will be able to consider whether the use of an alternative course of action would be more suitable."

The cost of the OAS was 0.50% per year. The illustration documentation issued at the point of advice confirm this.

The contributions made into the uncrystallised pot in the RA began as employer contributions from Mr C's company, as it was part of his plan/objectives to use such contributions.

Following from the initial recommendations to set up the RA (with the initial contribution into the uncrystallised pot and fund investments summarised above) and then to move the HLP into the RA (its crystallised pot), there is evidence that –

- The initial employer contribution of £5,000 was made on 26 August 2020.

- The partner wrote to Mr C on 2 May 2021, referring to a discussion on the same date and to previous advice he had given in a letter dated 29 March 2021. A copy of that letter appears to have been enclosed for the purpose of recapping on its contents. The May letter said nothing had changed materially in Mr C's circumstances. No change to the existing arrangement was recommended. The partner then advised him to make an additional £2,000 contribution into the RA, for reasons he said he had previously given. He also summarised a suitability analysis to support the contribution advice. An employer contribution of £2,000 was made on 5 May 2021 into Mr C's RA.

- The partner wrote to Mr C and his wife on 22 November 2021, referring to a review discussion on 19 November 2021 and to previous 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. The November letter says nothing had changed materially since the July letter. No change to the existing arrangement was recommended. The partner then advised that Mr 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 to support the contribution advice. An employer contribution of £2,000 was made on 23 November 2021 into Mr C's RA.

- The partner wrote to Mr C and his wife on 5 January 2022, referring to a 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 Mr C make an additional £2,000 contribution into the RA, and he said his reasons remained the same as those he previously advised. An employer contribution of £2,000 was made on 7 January 2022 into the RA.

- 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 sent to them on 7 and 22 March. 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 recommended £2,000 pension contributions. This was followed by an employer contribution of £2,000 on 16 May 2022 into Mr C's RA.

- 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 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 Mr 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 him and the RA. The document confirms the RA's uncrystallised and crystallised ports were worth around £42,000 and £122,000 respectively at the time. 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 Mr C was not deprived of ongoing reviews of the RA, so his claim for a refund of OAS fees is not upheld. He appears to have received substantive and meaningful reviews of the RA every year since opening it and, it appears, three times in 2022. I note that the reviews were mainly coupled with new advice, but the point is that the reviews (of the RA) that he paid for under the OAS happened as they were supposed to.

Suitability

In this section I address suitability of the initial RA recommendation, investment of the contributions into the uncrystallised pot, transfer of the crystallised HLP into the RA and investment of the transferred HLP value.

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 uphold its clients' best interests 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.

The above is context for my consideration of suitability in this case. Overall, and in summary, the recommendations to Mr C had to be suitable for his objectives, profile and circumstances, they had to be properly and fairly executed and they had to be in his best interests. I have relied on documentation and evidence from the points of advice, especially (but not limited to) the suitability reports issued to him. I have not seen evidence that the reports contents were disputed by him at the time, so I consider their contents broadly reliable.

Based on the evidence, it appears that whilst Mr C already had the HLP, he wanted to consider a fresh pension arrangement in 2020 for the contributions he wanted to make. Issues with the HLP, the absence of ongoing advice since he withdrew the TFC from it in 2015 and his objective to have an OAS have been referred to in the suitability assessments as reasons why he wanted a new arrangement.

With regards to the initial advice to set up the RA and contribute into it, I have considered information about the HLP. I have looked into whether (or not) it could have catered for the things he wanted in the new arrangement. Had that been the case, sensible advice would have been for him to use the HLP and avoid the costs and efforts of setting up the RA. However, if that was not the case (if the HLP could not address his 2020 objectives), consideration of a new arrangement was arguably justified. I have considered the same HLP details with regards to the partner's advice to close it and move its value into the RA, but I address this separately further below.

I note the following about the HLP –

- Background – it began in 2008; at the time of advice, it was a Flexi Access Drawdown arrangement, after TFC had been withdrawn in 2015; no other withdrawal had been made from it since; it had a Transfer Value of £110,011.79.

- Benefits – as the investigator noted, it had a guaranteed plan value of £103,822.06 and maximum guaranteed income (at age 67) of 5.5% of that amount (around £5,700); but it had none of the following – guaranteed annuity rate, guaranteed minimum pension, additional fund discount; the only associated loyalty bonus had been paid in its 10th year (in 2018), but no loyalty bonus applied to it thereafter.

- OAS – there appears to have been an ongoing fee or, possibly, trail commission associated with it, but available evidence is that Mr C did not receive any ongoing advice or service for it, and that his last engagement with an adviser (in relation to the HLP) was in 2015 when he withdrew the TFC.

- Investment and Costs – it was completely invested in the CMP; a 2019 version of HLP's factsheet for its portfolios shows that it was one of five managed portfolios – each defined by objectives and risk tolerance levels, with an 'Income' low risk portfolio at one end and an 'Adventurous Growth' higher risk portfolio at the other; the CMP was the third/median of the five portfolios, with an asset allocation of 45% fixed income (33% UK and 12% international) and 55% equities (37% UK, 10% US, 5% European and 3% Japan), which would suggest the CMP was geared towards a broadly medium risk profile; the HLP's charges were as the investigator summarised (AMC of 0.75%, fund charge of 0.44%, GRIC of 0.35% and 0.5% fund-based renewal commission).

In addition, I note reference in the complaint file to the HLP being unable to accept new contributions at the time. I am not quite satisfied with the clarity of evidence on this so I will not rely on it. I do not consider that I need to. In my view, on balance, and based on available reliable evidence, recommendation of the RA for Mr C's employer contributions was not unreasonable.

He wanted an OAS for the contributions, to inform how they were invested. He did not have an OAS with the HLP. It does not appear that there was ever an OAS set up for the HLP, but if there was, evidence shows that he had not received advice on it over the previous five years and he wanted to change that. Hence his consideration of the OAS he discussed with the partner.

His risk profile and objectives did not quite match the HLP's CMP. Even if he could make contributions into the HLP, he had an upper medium risk profile in 2020, which the CMP did not reflect. I have considered the fact find information used at the time as part of his risk profile assessment and it is similar to the information presented to him in suitability reports and review documents, none of which he appears to have disputed, so I consider the assessment and resulting risk profile to be reliable.

I do not find that Mr C undertook an unsuitable leap in terms of exposure to risk. His move to an upper medium risk profile was significant and it constituted a difference when compared to the CMP. However, as I stated above, the CMP could be viewed as geared towards a broadly medium risk profile. Even if it was at the cautious end of a medium risk profile, the move from a broadly medium risk profile to an upper medium risk profile was not, I repeat, unsuitable.

If he considered a step up from the CMP, into the fourth HLP managed portfolio called

‘Growth’, it still remained a managed portfolio. There is evidence of his discussions with the partner about SJP’s approach to managing investments coupled with the OAS, and about how he sought a more active and dynamic approach for the investment of his contributions. This is what the RA solution (inclusive of the OAS) offered him, but he did not have that with the CMP, given its comparatively less active and less dynamic characteristics.

Overall and on balance, I do not consider that the advice to set up and contribute into the RA was unreasonable. I will address investment of the RA later.

With regards to moving the HLP into the RA, the same circumstances described above apply. However, a reasonable question to start with relates to why he was not advised to simply leave it as it was. Afterall, he had already opened the RA’s uncrystallised pot, in which his objective to make ongoing contributions with an OAS and with SJP’s investment management approach was to be fulfilled.

Available evidence is that he held the same objectives for the HLP, and did not wish to treat it differently. He wanted the OAS and an active/dynamic investment approach for the ongoing investment of the HLP’s value. That value was a significant amount, it was considerably greater than that of the RA’s uncrystallised pot and it (the HLP’s value) appears to have been his main pension arrangement. In this context, there was an understandable incentive for him to ensure that it was looked at, placed in a position that served his best interests (and his desire to enhance his retirement provisions) and managed and/or monitored on an ongoing basis.

The partner could not provide the OAS, or SJP’s investment management approach, for the HLP because his (and SJP’s) service was tied to SJP products only. The suitability report explained this. Therefore, it appears that one of the key reasons the transfer (into the RA) was considered was to enable the OAS and, in turn, active monitoring and management of his main pension arrangement. Other reasons stated in the suitability report include – to invest for growth (which was connected with the idea of enhancing his retirement provisions), to have flexibility in his retirement income options (including the ability to delay drawing income until required, as he had no imminent need or plan to draw income) and to facilitate his wife benefiting from any remaining pension fund after his death.

As the investigator noted, a Stakeholder Pension was considered and discounted, because of its inability to facilitate the payment of adviser fees from the pension. Such a facility can present benefits, where 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. For this reason, I understand why this option was discounted. It would have been in Mr C’s best interests to achieve potential net cost savings by paying adviser fees out of his pension.

The partner recommended the switch to the RA and transfer of the HLP’s crystallised funds into its Drawdown facility. This was his proposed solution (inclusive of the OAS and SJP’s investment management approach) to Mr C’s objectives. He explained how the solution addressed each objective. Overall, I do not consider that there is dispute between the parties in this respect, and evidence of the details about the solution shows that it matched his objectives. His complaint about unsuitability does not appear to pursue such a dispute. Instead, it mainly alleges that the switch resulted in reducing the range of mainstream funds in his pension portfolio, resulted in less diversification within the portfolio, a higher exposure to risk and left him with higher charges.

With regards to pension switching, the regulator’s checklist (published in 2009) highlighted four key issues firms should be focussed on – Charges (is the consumer being switched to a pension that is more expensive than their existing one(s) or a stakeholder pension, without good reason?); Existing benefits (is the consumer losing benefits in the switch without good reason?); Risk – (is the consumer switching into a pension that mismatches their risk profile and personal circumstances?); Ongoing management (is the consumer switching into a pension that needs ongoing investment reviews, and has this been explained, offered or put in place?).

Combining Mr C's specific allegations with this checklist, the main areas to consider are – charges, existing benefits, suitability of the RA's portfolio (especially in terms of risk profile and fund diversification) and ongoing management.

The effect of the 4.50% initial advice fee can be considered beyond the point of initial advice. Mr C had a time frame of "*five to 10 years or longer*". I consider it safe to assume he intended to retain the arrangement for at least 10 years. Five years from the point of advice would not have taken him to his preferred retirement age, so it is likely that his plan was to retain the RA for at least around 10 years.

Spreading the initial fee over 10 years 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).

This amounts to twice the AMC for the HLP. If the HLP's GRIC is also taken into account, given that it was a product related cost like the product costs included in my calculations for the RA above, the result is a cost of 1.1% (0.75% AMC + 0.35% GRIC) for the HLP compared to 1.50% for the RA solution. In either case, the RA solution was certainly more expensive than the arrangement Mr C previously had. However, on balance, I consider that the additional expense stood with good reason.

The additional expense included the cost of the OAS, which Mr C did not previously have. Part of the OAS was access to SJP's investment management approach, presented as providing the type of active/dynamic management he did not previously have in the HLP but wanted. Therefore, there was a clear basis on which costs had increased, and an ongoing advice/review service from any firm would have led to additional costs in any case. Given that such a service was part of his objectives, this additional cost appears to have been unavoidable.

The fee for the OAS was 0.5% per year, so the remainder 1% of the RA solution's total 1.5% cost was for the initial charges for advice and for the product, and the ongoing product charge.

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*". This was the OAS fee rate applied to Mr C 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 I said above, covered the initial charges for advice and for the product, and ongoing product charge. Mr C required fresh initial advice on his pension arrangements at the time (and especially because he had not received any advice on the HLP in the previous five years), so that would have come at a cost in any case. In terms of the initial advice fee of 4.50%, 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 Mr C's case was within the sector range at the time, and not an outlier.

As was the case for advice, the product Mr C 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.

Overall, on balance, and for the reasons given above, I do not find that the annual cost (of 1.50%) to Mr C of the SJP RA solution, and the additional expense that represented (in comparison to the HLP) was unsuitable.

There is no dispute that Mr C lost existing pension benefits in the switch. He lost the HLP's guaranteed pension value and income. The partner did not shy away from this in his advice, and the matter is given prominent treatment in the suitability report (including clear and repeated references to Mr C losing the benefits and the reasons, based on their discussions, he was prepared to do so).

Whether (or not) Mr C was prepared to lose the benefits does not, on its own, determine the suitability of being advised to proceed with the switch regardless. In this regard, I agree with the investigator's observation about the reasons given at the point of advice, which mainly related to Mr C's understanding of the lost benefits and his readiness to proceed.

I acknowledge it is important to note that he made an informed and wilful decision, and to note what appears to have been reasonable grounds on which his decision was made. Nevertheless, the loss of a guaranteed pension value and pension income is the loss of future pension value and income that carried no risks. To draw this out a step further, it also meant that Mr C was putting himself in an arguably less favourable position whereby he had to face future pension value and income risks/uncertainties that he did not previously have. Something more than his understanding and acceptance of the loss – or his 'position' on the loss – is needed.

For this purpose, I have also noted his risk profile. He was an upper medium risk taker, and available evidence shows that he was persuaded by the prospects of the RA, its associated portfolio, SJP's approach to actively monitoring and advising/managing the portfolio, and the prospects of its future performance. The illustrations he was given fed into this, and I consider their contents, especially on the performance projections/assumptions and effects of charges, to have been fairly presented. I accept that this also relates to Mr C's *position on the loss*, but it goes further. It goes towards the partner's assessment (or any assessment) – granted, based on assumptions (as pensions illustrations commonly are) – of the suitability of losing the guaranteed benefits for the prospect of better performance elsewhere.

The assessment was positive and, on balance, it supported the view that there was good reason to proceed with the switch, despite the loss of the guaranteed pension value and income in the HLP. Whilst the lower rate assumption produced a future pension value, after 10 years, below that of the HLP's guaranteed value, the annual taxable income it was projected to provide (from the lower rate future value) was greater than the HLP's guaranteed maximum income – after tax, it probably remained greater or at least comparable. Then, the middle and higher rate assumptions both produced pension values and projected annual taxable pension incomes significantly greater than those guaranteed in the HLP. In other words, there were grounds at the time of advice to conclude, on balance, that the risk of losing the HLP's benefits was worth taking – especially for Mr C and his upper medium risk profile.

I have not given too much weight to what has happened to the RA's portfolio since the switch, because none of those events were known or predicted (with certainty) at the point of advice – and they did not form part of the advice. However, they should not be ignored completely. It is fair to consider them in the context of the 2020 illustrations and in terms of how reasonable those illustrations were, when compared with what has happened since.

As the investigator said and as I summarised above –

"*Valuations of the RA show that as of January 2024 – just three years after the transfer – it was worth £181,372 and that, within this value, the £107,500 (net) transferred into the RA from the HLP was worth £130,812. This amounts to growth of 21.7%. Mr C is less than four years away from his selected retirement age. Available evidence is that in order to match the guaranteed income under the HLP only 4.4% of the RA's value is needed, and that even modest future returns in the RA would reduce this further by the time he reaches his selected retirement age. It therefore looks like the RA is on course to match, if not exceed, the benefit lost in the HLP*."

This shows that the RA's performance has already beaten the illustration's middle rate value assumption (of £120,000) around six years before the 10 years term of the assumption. Of course, its exposure to risk continues and, unlike the HLP, there is no guarantee to lock-in any pension value in the RA, so the performance in the quote above might or might not be improved upon in the future and might even be reversed in the future – any of which will affect the RA's value in retirement. However, that was and remains the risk, and Mr C had the profile to undertake such a risk. A point to note is that the RA's portfolio's performance thus far supports the reasonableness of the 2020 illustrations/assumptions and the advice based on those illustrations/assumptions.

Overall and on balance, I do not consider that the loss of the HLP's benefits, on its own, rendered the switch advice unsuitable.

Mr C had an upper medium risk profile. We have been given factsheets, relevant to the different times of advice, for the SJP funds that were recommended for the RA (both the uncrystallised and crystallised pots), 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 Mr C's upper medium risk profile. It was in line with that profile. I also do not consider that it was lacking in diversification. The focus was clearly equities. Given the risk profile assessment and objective for the portfolio that was not unreasonable, but the funds were suitably diversified into relatively mainstream equities markets across the world.

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 investment of the £2,000 contribution was consistent with the upper medium risk profile. The EMEF allocation stands out, as a high-risk fund, 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. This, overall, placed investment of the contribution within the upper medium risk category, and that was Mr C's risk profile category. Furthermore, the contribution accounted for around 15% of the RA's portfolio. The majority remainder was invested as summarised above, so overall the RA remained within an upper medium risk profile.

In June 2022 SJP revised its approach on the EMEF and applied changes to that approach the following month. Its June 2022 notice 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.

SJP's change of approach for the EMEF meant the high-risk element in the RA's mix of funds (that is, in its EMEF holding) 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 this also helped to ensure that the RA was within an upper medium risk profile. In terms of diversification, addition of the EMEF, GVF and SREF (all of which continued to exist in the RA) only served to diversify the RA more, not less.

The October 2022 suitability report shows that the RA's portfolio had the following contents (as of 26 September 2022) –

- For the uncrystallised port, it had 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 remained within the upper medium risk profile.

- For the crystallised pot, it had 52% in the NAF (upper medium risk), around 29% in the GVF (medium risk), and around 19% in the SREF (medium risk). I am satisfied that this also remained within the upper medium risk profile.

By the time of the August 2023 review and recommendation, the partner's advice was to invest a 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). Despite the mix, this too could be viewed, overall, as being more in the upper medium risk category, because a total of 60% was allocated to the EMEF and NAF. However, that was Mr C's risk profile, so that was not a mismatch.

Overall, on balance and for the reasons given above, I do not find that the RA was unsuitably invested or that it was not properly diversified or that it was invested in a way that mismatched Mr C's risk profile. The relevant funds were geared towards achieving growth, as was his objective.

In terms of the need for ongoing management because of the switch, such a need clearly existed. Where ongoing monitoring and management might have been unnecessary for the managed CMP that Mr C previously had in the HLP, the RA's portfolio appears to have needed both. That was addressed as part of the advice to him, and both were provided to him within the OAS, so there is no gap in the recommended solution or unsuitability in this respect.

Overall, on balance and for the reasons given above, I do not find that Mr C was unsuitably advised to open the RA, to move the HLP's value into it, and to invest it.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 3 October 2024.

Roy Kuku
Ombudsman