DRN-4855089

Financial Ombudsman Service

The complaint

Mr A complains that St James's Place Wealth Management Plc (SJP) gave him an unsuitable recommendation to replace his existing personal pensions with its own pension plan.

What happened

In July 2014 SJP completed a fact-finding exercise to gather details about Mr A's circumstances. Of relevance here the fact-find recorded the following about Mr A:

- He was 58 years old, divorced with no dependents.
- He owned his property valued at around £325,000.
- He worked part-time, earning around £27,000 with £541 disposable income each month.
- He had around £18,000 in cash savings, £5,500 in premium bonds and £4,000 in an ISA.
- He had five existing personal pension plans and a preferred retirement age of 65.

Regarding Mr A's objectives the fact-find noted:

- He wanted to review the plans and ideally consolidate them for ease of management.
- He wanted on-going monitoring of his pensions and advice.
- He liked the idea of SJP's funds and managers' being actively monitored by an independent party.

In September 2014, following the fact-find, SJP produced a suitability report for Mr A detailing its recommendation and reasons for making it.

The suitability report recorded details about the five existing schemes Mr A held. I've summarised some of the relevant information contained within the suitability report in the table below:

Provider	Value	Fund Investments	Annual Charge	Exit Charge
Aviva	£21,496.32	Mixed investment (40-85% shares)	0.9%	
ReAssure 1	£104,391.47	Global Growth Newton Income M&G Corporate Bond International Aggressive	1.6%	£1.915.44
ReAssure 2	£32,152.43	AL International Aggressive M&G Corporate Bond Newton Income Global Growth	1.6%	£489.95
Friends Life	£16,885	Managed Stewardship European	6% based on initial units, 0.4% based on bonus units and reducing the 0.75% charge in accumulation units to 0.35%	
Scottish Widows	£8,118.51	UK Equity Japanese European	0.875%	

It also recorded Mr A's objectives as:

- *"You wish to benefit from a dedicated financial advisor and receive regular face to face reviews and pro-active advice on your pension as you currently do not have a financial advisor.*
- *You currently have no time to manage your own pension, therefore you would like to be advised on any decisions and be kept up to date with any changes in the market or legislation.*
- *Ensuring that you have sufficient retirement funding to enable a comfortable retirement at age 65 should you choose to do so.*
- *You do not have a specific income target in mind at this time and do not require one until you retire from working, expected at age 65.*
- *You wish to ensure the money you currently have invested is well managed to give the potential of superior investment performance over the 7 years to retirement*
- *You want to ensure that there is some active independent monitoring of the fund managers in respect of the pension plans as currently this is not the case on the existing plans.*
- *The proactive financial advice style is much more appealing to you compared to the reactive approach currently available through your pension provider.*
- *You want to consolidate your existing plans with one provider in order to make it easier to manage and less time consuming going forward.*
- *I have recommended the St. James's Place approach to investment management and you are happy to pay the additional charges such an approach involves. In particular, I have recommended the independent fund manager monitoring that is provided by Stamford Associates. You believe that this additional benefit can potentially deliver better returns over the 7 years term to retirement."*

SJP set out the options Mr A had, including leaving his pensions where they were or investing in a stakeholder pension. But ultimately, it recommended that Mr A transfer all five pensions with a combined value of around £180,000 to SJP's Retirement Plan.

The reasons for giving this recommendation were:

- *"With the Retirement Plan will give you access to a large fund range of external fund managers. The investment funds are managed with the intention of providing superior investment growth with investment diversity and medium risk. Stamford Associates & the Investment Committee review fund managers from all over the world and chose the best ones to run our funds. This means that you might have a smaller range of funds to choose from but with the knowledge that they are being managed by the best managers in the world so there is no need to have a large fund range.*
- *There is no extra cost for this high level of management, as it is all incorporated in one easy to understand charge.*
- *You will be able to choose from a range of select funds to better represent your attitude to risk in this area and your objectives and circumstances in the future. The funds will be managed by our fund managers whose performance will be regularly monitored by the committee. This will give you the flexibility to balance your risk without having to regularly monitor the fund performance yourself.*
- *You have access to the St. James's Place approach to Investment Management for the transferred monies and you will be able to benefit from the independent fund monitoring approach. You like this and believe that this has the potential to provide you with greater investment returns in the future because the fund managers and their performance is regularly monitored by the committee. Your pensions will be regularly reviewed in our annual review meetings and will be amended if necessary to meet your future objectives and legislations.*
- *You do not have to spend time to manage your pension funds yourself. You will be responsible for the initial investment but the performance of the fund managers will be monitored by Stamford Associates.*
- *You will receive regular advice on your retirement planning. This will be tailored to your individual needs and will be in line with current legislations. This will help you to keep on top of changing circumstances and legislation."*

The report also included some analysis of the increased level of returns Mr A's funds would need in the SJP pension in order to match his existing schemes. It noted that the additional growth required after the transfer to SJP was above the normal limit it would recommend. But after applying special terms, the average additional costs of transferring to SJP would be 0.48% per annum.

It noted that as well as the higher annual charges, there were other disadvantages to transferring to SJP too. These were that SJP would charge an early withdrawal charge if the funds were encashed within 6 years; SJP had fewer funds to invest in than ReAssure or Scottish Widows; Mr A would lose his protected retirement age of 60 with ReAssure, Friends Life and Scottish Widows; and there were exit charges on the ReAssure plans totalling £2,405.39.

The suitability report went on to consider Mr A's attitude to investment risk. It said SJP had discussed different types of assets and their associated risks. It said Mr A had some previous experience in investing in his current pensions.

It recorded that Mr A intended to retire in seven years' time when he reached the age of 65. So, his investment was over the medium term. As Mr A had around £18,000 in cash deposits, it said he had some capacity for loss and could absorb some losses without having a significant impact on his standard of living.

Overall, SJP concluded that Mr A was a medium risk investor and so recommended he invest in its Managed Funds Portfolio which had a risk rating of medium.

Mr A accepted SJP's recommendation to switch his five existing pensions to the SJP Retirement Plan. Over the course of the following months, all five pensions were switched to SJP.

In January 2023 Mr A complained to SJP via his professional representative. Mr A's complaint contained several areas where he thought SJP's advice was flawed. Relevant to this complaint he said:

- He didn't fully understand that he may lose all his accrued and future pension benefits.
- The level of risks involved with the pension funds SJP had recommended carried an unsuitably high level of risk.
- SJP failed to provide the agreed annual reviews while Mr A had paid fees for that service.

Mr A also complained about advice to invest in an ISA in 2019. However, that complaint has been dealt with separately, so I make no mention or findings in relation to that complaint in this decision.

SJP responded to Mr A's complaint in May 2023. In its response SJP said its records showed Mr A had received regular review meetings each year since 2015. So, it was satisfied it hadn't failed to provide the agreed service to Mr A.

SJP went on to say that it had assessed the level of risks of the funds recommended to Mr A. It was satisfied that a '*full and well documented discussion*' had been had with Mr A and his attitude to risk had been recorded as 'medium'. SJP said Mr A's funds had been invested in its Managed Funds Portfolio which matched that attitude to risk. And Mr A had signed to say he understood the recommendations and was happy to proceed.

Finally, SJP said Mr A's funds were already held in defined contribution schemes, so there were no guarantees attached to the accrual of his benefits. It noted there were some disadvantages to the switch which included exit charges being applied and a loss of a protected retirement age of 60. However, it said it had discussed these with Mr A and he still wished to consolidate his plans.

Mr A didn't agree with SJP's response and so brought his complaint to our service. He said the recommendation to consolidate his plans had meant he'd lost out on accrued and future benefits as well as potentially being exposed to higher charges. He said just because he signed to say he understood the advice didn't make it suitable and, again, discussing and explaining the disadvantages to the switch didn't make the subsequent advice suitable.

I sent SJP and Mr A my provisional decision on this complaint on 20 May 2024. I was minded to not uphold Mr A's complaint. I invited both parties to the complaint to provide any further evidence or arguments that they wished to be considered.

Mr A had no further submissions to make.

SJP said it accepted the outcome of my provisional decision and had no further arguments to be addressed. SJP did, however, provide comments on some of the findings in my provisional decision. I don't think it's necessary to comment on all of the points raised but I will address the matters which I think are materially relevant to Mr A's complaint in my findings 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.

When considering what is fair and reasonable, I take into account relevant laws and regulations as well as the regulator's rules, guidance and standards. Where appropriate I also consider what was good industry practice at the time of the advice.

What the regulator had said?

As a regulated firm, SJP had many rules and principles that it needed to adhere to when giving advice to Mr A. Many of these were found in the regulators handbook under the Conduct of Business Sourcebook (COBS) and Principles for Businesses (PRIN). Over the years the regulator also provided guidance to be read alongside the applicable rules.

The most relevant rules and guidance to this complaint are:

COBS 2.1.1 – A firm must act honestly, fairly and professionally in accordance with the best interest of its client.

COBS 9 – 'Suitability'

PRIN 2.1 (6) – A firm must pay due regard to the interests of its customer and treat them fairly.

PRIN 2.1 (7) - A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.

PRIN 2.1 (9) – A firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgement.

In 2009 the then regulator, the Financial Services Authority (FSA) published a report on the quality of advice on pension switching. The report identified four main areas where consumers had lost out:

- They had been switched to a pension that is more expensive than their existing one(s) or a stakeholder pension (because of exit penalties and/or initial costs and ongoing costs) without good reason
- They had lost benefits in the pension switch without good reason. This could include the loss of ongoing contributions from an employer, a guaranteed annuity rate (GAR) or the right to take benefits at an earlier than normal retirement age
- They had switched into a pension that does not match their recorded attitude to risk (ATR) and personal circumstances
- They had switched into a pension where there is a need for ongoing investment reviews but this was not explained, offered or put in place.

In 2012 the FSA produced finalised guidance – *'FG12-16 Assessing suitability: Replacement business and centralised investment propositions'.* The guidance pointed out several examples of good and poor practice the regulator had seen in the replacement business cases it had reviewed.

Amongst other things, its key findings said:

> *Replacement business*
>
> *2.11 We continue to identify firms failing to consider the impact and suitability of additional charges when conducting replacement business. Several firms in our review failed to consider the costs and features of the existing investment, and were unable to quantify the additional charges associated with the new investment. In addition, several firms failed to provide a comparison of the costs of the existing investment and the new recommendation in a way the client was likely to understand.*
>
> *2.12 We saw examples of firms recommending switches based on improved performance prospects, but providing no supporting evidence to show that these performance prospects were likely to be achieved. While we acknowledge that firms cannot be precise about the potential for higher returns, where improved performance is an objective of the client, firms should clearly demonstrate why they expect improved performance to be more likely in the new investment.*

> *2.13 Firms often failed to collect adequate information on the existing investment or failed to consider the features and funds available within the existing solution. Firms should collect adequate information on the existing investment to demonstrate they have taken reasonable steps to ensure the suitability of their recommendation.*

In 2016 the FCA published guidance on its website for 'assessing suitability'. The guidance said that when undertaking replacement business, firms need to ensure they:

- *consider objectively your clients' needs and objectives*
- *collect necessary information on your clients' existing investments and the recommended new investments, such as the product features, tax status, costs and the performance of the underlying investments*
- *implement a robust risk-management system to mitigate the risk of unsuitable advice and poor client outcomes*

Although the guidance in 2016 post-dates the advice SJP gave to Mr A in 2014, it didn't mark a change to the rules SJP were already expected to follow. The essence of the guidance, in my view, was to remind firms like SJP of the standards that should already have been relevant when considering replacement business.

The 2016 update by the FCA also referred to the FSA's FG12-16 guidance. I therefore believe FG12-16 to have still been considered appropriate and relevant by the FCA.

In its submissions to our service SJP said COBS 9 is founded in a test of 'reasonableness'. Requiring firms to have taken *'reasonable steps'*; are *'reasonably able to demonstrate'*; and have a *'reasonable basis'* for its recommendations meeting their client's objectives. It said, *"We would note that in the investigator's assessment of the complaint there appears to have been a focus on a higher standard that the advice and recommendations must be 'clearly in the client's best interests.' We would note that we believe that this is not the appropriate, standard, and the Ombudsman would be misdirecting themselves were they to erroneously adopt this test."*

SJP said it agrees that both COBS 2.1.1 and COBS 9 apply to Mr A's complaint. But COBS 2.1.1 is an overarching rule that applies to all business and all clients. Whereas COBS 9 contains specific rules regarding a certain type of business carried out for Mr A.

While I agree with SJP that COBS 2.1.1 is an overarching rule for all business conducted under COBS, I disagree with SJP that our Service has applied a higher standard than required. I'll explain why.

Firms must ensure they meet the specific rules in COBS 9 when assessing the suitability of a recommendation to their client. However, in doing so, they also need to act in their clients' best interests as it says in COBS 2.1.1. Neither rule supersedes nor replaces the other.

In its submission SJP said that 'clearly' acting in their client's best interest is not the appropriate standard. While the word 'clearly' isn't included in COBS 2.1.1, it says firms 'must' act in accordance with the best interests of its client. That doesn't leave any room for a firm to act against its client's best interests even if it complies with later rules in the handbook.

In my view there is no conflict between the rules in COBS 2.1.1 and COBS 9. SJP may feel that the standard is higher in COBS 2.1.1 than COBS 9, but both rules apply in this complaint. I have considered them to carry equal weighting, and both need to have been complied with.

Did SJP follow the regulators rules and guidance?

Mr A has confirmed that he now accepts yearly reviews have taken place with SJP, so my decision here will focus on the advice to switch from Mr A's existing plans to the SJP Retirement Plan in 2014.

When looking at whether SJP's advice in 2014 was suitable I've considered Mr A's recorded objectives at the time and looked at whether SJP's advice met those objectives and was suitable for him based on his individual circumstances.

For ease, I've considered below a summary of Mr A's broad objectives from the evidence we have at the time of the advice.

Loss of guarantees

One thing the regulator warned against in replacement business was the loss of guarantees associated with the existing schemes.

In his complaint Mr A said he wasn't warned he might lose his accrued and future benefits of his workplace schemes. However, I've seen nothing in the evidence to suggest there were any performance guarantees on his existing schemes or any protection from the loss of investment returns. None of Mr A's existing schemes had defined benefits and all were invested in the markets and already held the risk of ultimately losing money.

In the suitability report and documentation provided to Mr A at the time of the advice, SJP warned that the value of the funds may go down as well as up. So, I'm satisfied Mr A was aware his pension funds remained at risk of fluctuating investment returns.

I've also seen nothing in the evidence provided that shows Mr A lost valuable guarantees that he ought to have made use of. For example, there were no guaranteed annuity rates or enhanced tax-free cash entitlements.

The only guarantee seemingly available was a protected retirement age of 60 in the ReAssure, Friends Life and Scottish Widows plans. It doesn't seem that the SJP plan had any restrictions on when Mr A could access his plan. And he was already over the legal age to flexibly access his pension benefits. However, SJP's plan had early withdrawal charges in the first six years which may have affected any withdrawals up until the age of 64 for Mr A.

I accept it was likely Mr A's planned retirement age was 65 and so the loss of an earlier guaranteed retirement age was unlikely to have had a material impact on him. So, I don't think that reason alone would cause the recommendation to switch to SJP's Retirement Plan to be unsuitable.

Consolidation of existing pensions

SJP identified that Mr A wanted to consolidate his pensions into one place. I think that was a reasonable objective to achieve for Mr A. He was approaching retirement age and having all his funds in one place would afford him ease of monitoring and flexibility when it came to taking benefits. Dealing with just one provider may have also meant it was easier for Mr A to ensure his pension funds were all invested in a way that matched his attitude to investment risk and remained balanced. So, I think recommending that all Mr A's existing pensions were brought into one plan was likely to be suitable for him.

Need for on-going advice

There can be several reasons why someone may wish to access ongoing advice. Mr A's circumstances in 2014 were that he was 58 and looking to retire in seven years' time at age 65. As Mr A was over the age of 55, he was able to start accessing his pension benefits if he needed to.

In my view it's not unusual for someone approaching retirement to start paying closer attention to their pensions, how they are performing, and start seeking advice on how best they access them.

Generally, the closer someone is to retirement the more decisions need to be made about how the pensions will be used to fund income in retirement. So, I don't find it unusual that Mr A would also have a genuine objective to access on-going financial advice as he approached retirement age.

There is, of course, usually an additional cost to receiving on-going advice so I'd expect a firm to clearly demonstrate to its client how the benefits of receiving on-going advice outweigh the costs.

Mr A was likely to have some benefit from receiving on-going advice in his circumstances. I say that because it was likely to lower the burden on him of having to monitor the fund's performance and make changes to it as he approached retirement. It also gave him access to a professional adviser to ensure his funds produced an income in retirement that not only covered his needs but also advised on how to make his funds last over his lifetime.

In the suitability report the cost of on-going advice wasn't specifically separated out from the overall costs of the plan. SJP looked at the critical yield required to outperform Mr A's existing schemes. That included looking at the annual costs of those schemes and any exit penalties and comparing that to the on-going costs of SJP's Retirement Plan which included fees for on-going advice. That showed, applying a special rate to Mr A's plan, that the SJP Retirement Plan was 0.48% more expensive than the combination of his existing plans.

The additional costs of moving to SJP were set out in a clear way which included both a percentage and monetary figure for the first year. So, it ought to have been clear to Mr A that the SJP plan was more expensive than his existing schemes.

However, SJP needed to demonstrate not only the additional benefit and cost of on-going advice but how the recommendation was suitable overall despite the additional cost. And it needed to show the likelihood of how accessing on-going advice, and other benefits, would outweigh the increased cost. I'll cover this in more detail below.

Access to SJP's investment approach and the potential for superior performance

In its report SJP said that, by switching, Mr A would have access to its investment managers who are proactively monitored by an independent party – leading to potentially better performance.

SJP said Mr A's existing schemes didn't have independent monitoring of their funds, but I've seen no evidence that SJP researched Mr A's existing providers to make sure that statement was true and not misleading.

Mr A already held existing pensions with reputable providers who I think were likely to have had systems in place to ensure the funds they allowed on their platforms were closely monitored. Albeit they may not have been monitored in quite the same way as SJP's funds.

While accessing SJP's own approach to investments was a by-product of the advice, I've not seen convincing evidence that Mr A was genuinely only interested in SJP's approach to investments over and above any other firm. So, I've put little weight on SJP achieving this objective when considering suitability overall.

In its suitability report SJP explained that following discussions about its approach to investment management it had *'recommended the St. James's Place Investment Management Approach because this additional benefit can potentially deliver better returns over your 7 year term to retirement.'*

The FSA's guidance from 2012 explained that firms needed to demonstrate *'when improved performance prospects are a driving factor for the recommendation, it is clear why the new investment is, in the firm's opinion, likely to out-perform the existing investment'*.

SJP's suitability report explains its proactive management of fund managers and careful funds selection processes however I don't think the suitability report goes far enough to demonstrate *why* it thought its approach would produce better returns. I say that because

SJP needed to have a reasonable basis on which it could claim it was likely to deliver better returns.

In the FSA's guidance it gave an example of a firm's poor practice where '*… there was no evidence that it considered and compared the options and performance of each client's existing investment with the recommended CIP solution*.'

As SJP alluded to superior performance of their recommended product, as it did in this case, it needed to have some reasonable basis for believing it would outperform the previous funds. One way in which it may have done so was to compare the performance of the existing schemes with its own.

SJP say that when considering what was appropriate at the point of sale the rules in COBS 4.5A.14 and 4.5A.15 ought to be followed. It says it's not appropriate for a comparison to be made on simulated past performance which isn't always possible or practical to obtain.

I agree that information on past performance might not always be available. But it appears that it was in this case, as SJP have now provided such analysis. If that type of information wasn't available SJP would still need to have some other evidence to demonstrate why it was able to reasonably claim Mr A could potentially see better returns.

COBS 4.5A wasn't included in the handbook in 2014 when this advice was given, although there were similar rules in existence at the time. COBS 4.6, of that time, allowed for past performance to be included in communications with customers so long as it was not the most prominent piece of information and included relevant warnings that past performance wasn't a reliable indication of future performance. In the absence of this, SJP relied on little evidence to substantiate its claim to Mr A. And provided Mr A with nothing on which he could base his consideration of how realistic it might be that SJP may outperform his existing schemes.

SJP have now provided analysis of the historic performance of Mr A's existing scheme with that of the SJP Managed Funds Portfolio. SJP's analysis went back to 2011 when the Managed Funds Portfolio was launched. SJP say it used portfolios representing the ceding schemes by constructing them using the funds held by Mr A in the same proportions he held them.

This is the type of analysis I would have expected SJP to have done at the time of the advice in 2014. I say that because the regulator had made it clear that it expected supporting evidence to demonstrate the likelihood of improved performance from the pension switch.

The analysis which SJP have now done, would have shown that between 2011 and the advice in September 2014 the SJP Managed Funds Portfolio returned 31.41%. Whereas a portfolio in line with Mr A's Aviva Portfolio would have returned 21.97%; Reassure 19.57%; and Scottish Widows 16.26%.

Whilst past performance is no guarantee of future returns, had SJP done the above analysis it would provide them with a basis for believing there was a potential for the switch to mean Mr A would see improved performance.

Although Friends Life was not included in the analysis, it made up a relatively small proportion of the overall funds. So, I think it's unlikely to have affected the overall analysis.

Therefore, even though the product that SJP recommended was more expensive than Mr A's existing schemes by 0.48%, I think the evidence sufficiently demonstrates that SJP ought to have considered there was a realistic prospect that Mr A could still see increased returns from his pension.

Comfortable retirement at age 65

SJP's suitability report makes mention that Mr A wanted a comfortable retirement at age 65. I think that was likely to be a genuine objective for Mr A.

However, SJP went on to explain that Mr A had no specific income in mind and the report made little comment or analysis on the level of income Mr A was likely to achieve by either remaining in his existing schemes or by transferring to SJP.

It was SJP's role to get to know its client and understand not only his needs at the time but knowing his likely needs in retirement would be fundamental to establishing whether this objective could be met. It's disappointing to see that little analysis seems to have been done of what Mr A's income requirements in retirement, being only 7 years away, would likely be.

I'd also have expected there to have been discussions around whether Mr A's current contributions would likely allow him to meet his objectives and recommend he make further contributions if it didn't.

I therefore don't think SJP evidenced how this objective would be met for Mr A through their recommendation. However, as I've already explained above, if SJP had done a comparison with Mr A's existing schemes it would, most likely, have given the same recommendation to Mr A. I say that on the basis that SJP thought it was likely their recommendation would potentially deliver better returns than Mr A's existing schemes. So, he'd be more likely to meet this objective by transferring to SJP's Retirement Account than remaining with his existing schemes.

Alternatives to replacing

While considering whether a switch to SJP met Mr A's objectives, SJP also thought about alternatives.

In its suitability report SJP considered whether Mr A ought to leave his pensions where they were. And possibly switch funds within his current plans – which would avoid the higher charges associated with moving to SJP's Retirement Plan.

It said SJP had discussed that option with Mr A but, in the suitability report said, *"…I did not recommend that you leave your plan as it is currently because your current provider doesn't offer a facility to receive financial advice on your existing pension as you are already aware of. You would also be responsible for your own fund choice and the supervision of the underlying investments."*

SJP say the wording used in the suitability report demonstrates the adviser was commenting on the current pension provider's ability to give advice on their product and was a factual explanation of the limitations of Mr A's existing scheme. SJP say the evidence also demonstrates its adviser accurately disclosed their own status in terms of what they could and couldn't advise on.

Looking at the information provided to Mr A at the point of sale, I'm satisfied Mr A ought to have been aware of the limitations of SJP's advice – being restricted to its own products and funds.

However, I think SJP's comments here could have been clearer. I say that because I think it's likely Mr A would be able to receive financial advice on his existing pensions from many independent financial advisers.

I've seen no evidence that SJP asked Mr A's existing providers whether they would offer direct renumeration to an independent advisor, but even if they wouldn't, Mr A would still be able to pay an independent adviser directly for advice on his existing schemes.

SJP ought to have been clearer that, while it couldn't provide advice on Mr A's existing pensions, he could get advice on them from elsewhere. But it would have been fair to also point out that any advice on the existing schemes would come at a cost to Mr A. I'm not persuaded that had SJP been clearer here, Mr A would have sought advice from elsewhere. I say that because, as I've already explained, I think SJP's advice met many of Mr A's objectives, the limitations of SJP's advice were explained, and he was happy to proceed with the switch to SJP on that basis.

Risk of the investments

The regulator doesn't prescribe specific ways in which businesses must assess their client's attitude to investment risk. It just needs systems in place to ensure it truly understands its client's attitude to investment risk and capacity to tolerate losses.

In SJP's case, it explained in the suitability report that it had discussed Mr A's attitude to investment risk and capacity for loss in conjunction with its guide to *'understanding the balance between risk and reward'*.

It's recorded that Mr A and SJP discussed different types of investments, the time horizon of the investment, its affordability, and Mr A's capacity for loss. Following that discussion SJP say Mr A confirmed he was a Medium Risk investor.

I wasn't present at the meeting between Mr A and SJP, so I can't know for certain how the different risk categories were presented and discussed. And it's Mr A's complaint that the investment carried too high a risk.

I therefore thought about whether Mr A's attitude to investment risk was measured correctly by SJP. At the time of the advice, it was recorded Mr A intended to continue working for 7 years, so he was investing for at least the medium term. He also had savings to rely on, some disposable income and an unincumbered property. So, I think it's fair to say he had some capacity to tolerate losses.

From Mr A's recorded objectives, I also think it's fair to say Mr A was keen to ensure his pension funds saw returns in the market. There's no suggestion he was content with his level of funds and seeking to protect them with no risk.

SJP's guide gave examples of the views of investors along a spectrum of risk. The description under Medium Risk said;

> *"You want your capital to keep pace with inflation and are investing for at least five years. You are comfortable with most of your capital being invested in equities and property, some of it overseas. You realise that there may be significant falls in the value of your investments, and accepting this risk gives you the potential to achieve better long-term returns."*

This description of the traits of a medium risk investor seem to align with Mr A's circumstances and objectives at the time of the advice. Therefore, I'm satisfied that SJP accurately assessed Mr A as a Medium Risk investor.

I then must consider whether the investments SJP recommended were in line with this risk profile.

SJP have supplied the fund fact sheet from the Managed Portfolio from September 2014. I'm satisfied the fund was aimed at medium risk investors, falling into 'Medium' on the spectrum of risk. It was designed for investors seeking to invest for a minimum of five years and to hold a variety of assets including fixed interest and cash assets. So, I'm satisfied it was suitable for SJP to make a recommendation for Mr A to invest in the Managed Portfolio.

Summary

The regulator has said that where the recommendation is to move into a more expensive product, there needs to be good reason to do so, and the reasons need to be explained to the client.

For the reasons I've given above, SJP didn't clearly explain how the benefits outweighed the costs. Specifically, by failing to provide any reasons to suppose that its product may outperform the existing schemes. But had it done what I think may instead have been best practice, I don't think that additional information would have stopped Mr A transferring his pensions to SJP.

The evidence available to me shows that Mr A's objectives were met by switching to SJP. He was approaching retirement age, so the benefits of on-going advice and better performance prospects are likely to have outweighed the additional 0.48% in costs.

Furthermore, I'm satisfied that SJP fairly assessed Mr A's attitude to investment risk and capacity for loss and recommended an investment that aligned with it.

My findings are based on the specific circumstances of Mr A's complaint, his own objectives and the recommendations made. Nothing in my findings should be read as a comment on the general suitability of consumers switching to SJP products, as each complaint is dealt with on its own merit.

My final decision

For the reasons I've explained, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 2 August 2024.

Timothy Wilkes
Ombudsman