DRN-4966892

Financial Ombudsman Service

The complaint

Mr S has complained about the advice he received from St. James's Place Wealth Management Plc ('SJP') regarding his occupational defined benefit ('DB') pension.

SJP advised Mr S to transfer his DB scheme to a self-invested personal pension ('SIPP'), with Mr S now believing that this advice was unsuitable and has caused financial loss.

I would note here that whilst Mr S's initial complaint to SJP included an issue around a lack of ongoing annual reviews, this issue has not been forwarded to this service. As such this decision has focussed solely on the suitability of the DB pension transfer advice.

Mr S is being assisted in his complaint by his representatives however for ease of reference I have only referred to Mr S in the decision below.

What happened

The advice process commenced in September 2020, when Mr and Mrs S underwent a fact-finding process with SJP. This detailed their circumstances and objectives at that time and formed the basis of SJP's advice. This fact find confirmed that:

- Mr S was 58, married (to Mrs S aged 55) with two financially independent children.
- Both Mr and Mrs S were employed full time. Mr S had income of £50,000 a year with Mrs S having income of £40,000 a year. Both were looking to retire within the next 12 months.
- Joint monthly expenditure was recorded as being around £2,900, around £900 of this was in respect of the £185,000 mortgage on the family home.
- The family home was worth £400,000 with Mr and Mrs S having £90,000 in cash savings and shares valued at £2,600.
- Mr S was a member of his occupational DB pension scheme and would be eligible for a full state pension. Mrs S was also a member of her occupational DB scheme and was eligible for a full state pension.
- Income needs in retirement were calculated as being around £21,500 a year.

Additional detail was included in the notes section of the fact-find. This confirmed that:

- Mr S was aware that if he were to work until 65 his pension would be more valuable. However, he was happy to trade any additional growth for the opportunity to retire whilst healthy.
- Mr S was adamant that he wanted to repay all his mortgage at retirement and keep savings balance of at least £90k to fund travel costs in retirement and act as an emergency fund.
- Whilst the mortgage had originally been set up to run into retirement this had been done to make it more affordable whilst his children were living at home. The intention had always been to use a pension lump sum at retirement to repay the debt.

- With regard to risk ('ATR') a medium risk approach was agreed. This was based on Mr S's previous experience and the fact he expected most of the transferred funds to remain invested for most of his lifetime.
- With regards to capacity for loss it was explained that after taking maximum tax-free cash of around £200,000, Mr S could repay his mortgage and still retain total cash savings of around £100,000. This would be used to fund luxuries (travel) of around £12,000 a year however could also be used to support the entirety of his income needs for a couple of years should investment markets be volatile in the early years of his retirement. This would allow the funds within the pension to remain untouched to ride out any short-term market volatility.
- If the transfer did not take place Mr S confirmed he would still retire and access his DB scheme. The lump sum available would be around £110,000 with income of £16,500 a year. The lump sum when added to the cash savings could repay the mortgage but would not leave his required emergency fund or the monies for future travel costs. There would also be an income shortfall of around £5,000 a year.
- To meet this shortfall, Mrs S would need to access her DB scheme early. However, by taking this 10 years early, the benefits payable would be significantly reduced.
- The transferred funds would only need to cover Mr and Mrs S's income needs in retirement until Mr S reached age 67. At this point both state pensions and Mrs S's DB scheme would become payable.

Also, in September 2020 SJP competed a Transfer Value Comparator ('TVC') analysis. This looked to assess the value of the benefits which would be given up upon transfer of Mr S's DB scheme.

This showed that it could cost Mr S £1.527m to purchase the benefits provided by the DB scheme (at normal retirement age of 65) from an insurer – around £720,000 more than the transfer value available.

The TVC also calculated that the transferred funds would need to grow 7.9% (the critical yield figure) each year until Mr S reached age 65 for the funds to provide the same level of benefits as the DB scheme.

Additionally, the TVC showed how long the transferred funds would last if income equal to the DB scheme income was withdrawn from the funds each year from age 65. At assumed growth rates of 1.6%, 4.6% and 7.6% the monies would last until Mr S was aged 82, 91 and over 100 respectively.

The advice was documented in SJP's suitability letter dated 19 November 2020.

This confirmed Mr S's objectives were:

- *"Accessing a capital sum now.*
- *Obtaining more flexibility when taking benefits from your pension.*
- *Improving the benefits payable on your death.*
- *Accessing the St. James's Place Approach to Investment Management.*
- *Ensuring you have ongoing advice and service on your retirement planning.*
- *The level of the Transfer value available from the* [DB] *scheme."*

The suitability letter confirmed Mr S's circumstances as per the fact find and stated that the transfer was being recommended to meet Mr S's objectives.

Retaining the DB was considered as an alternative to transferring however this was rejected as an option given this would not allow Mr S to retain sufficient capital or income once his mortgage was repaid.

The fees and charges applicable to the advice were documented and the recommended product was confirmed as an SJP SIPP with the funds to be invested into the Managed Funds Portfolio.

An addendum letter was issued in February 2021, this confirmed that Mr S wanted to amend the underlying investments within the pension. Whilst the original advice had been to place the entirety of the transfer into the Managed Funds Portfolio, 50% of the transfer was now to be invested into the Conservative Portfolio.

An illustration for the SJP pension was also produced at this time. This showed a transfer value of around £771,000, tax-free cash of around £192,000, with £578,000 being retained within the pension. The £578,000 was to be split equally between the Conservative Portfolio and the Managed Funds Portfolio.

This also confirmed the charges that would apply.

The initial advice charge was 4.5% of the transferred amount, with an initial product charge of 1.5%. Ongoing advice costs were 0.5% per year with fund costs of 1.5%. Additional early withdrawal charges could also be applied in the first 6 years after transfer.

Follow up advice was provided by SJP in November 2021. At this time Mr S wanted to access £20,000 to fund a trip to America to see his son. The advice documentation noted that Mr S had access to £90,000 in cash savings however using these funds had been discounted as Mr S did not want to deplete his cash savings so early in his retirement. Use of a £2,600 share portfolio was discounted on the basis that Mr S enjoyed trading these shares as a "hobby".

The November 2021 review confirmed that whilst Mr S currently had no "set plans" to generate a further capital sum or income from his pension, it was likely that some access would be needed over the next 5 years to fund retirement.

No changes were made regarding Mr S's ATR or the underlying investment funds at that time.

From April 2022 Mr S made regular income withdrawals of £1,250 from the SJP pension.

On 8 March 2023 Mr S received confirmation of what had been discussed at his recent annual review. His overall objectives, ATR and underlying investment funds had been considered, with the overall outcome being no changes to the pension at that time.

Having become concerned that the advice may not have been suitable, Mr S registered complaints about his ongoing advice fees and the original transfer advice.

SJP issued their complaint response on 13 July 2023. This stated that SJP believed they had met all the servicing standards agreed at the outset of their relationship with Mr S.

With regard to the issue raised about the advice Mr S had received, SJP said that this had been based on a comprehensive fact-find and that the transfer had enabled Mr S to meet his objectives at that time.

As such SJP did not uphold the complaints.

Unhappy with SJP's response, Mr S referred his complaint about the initial DB transfer advice to this service in October 2023.

Our investigator looked into things but did not believe SJP had acted unreasonably. The investigator concluded that whilst the analysis completed at the time did show that the transfer was unlikely to be in Mr S's financial interests, retaining the DB scheme would not have allowed Mr S and Mrs S to retire in 2021, repay their mortgage, and spend additional monies on travelling as per their objectives.

The investigator considered whether both Mr and Mrs S could have taken benefits directly from their DB scheme in 2021 to meet their objectives whilst retaining valuable lifelong guaranteed income, however the projections provided by Mrs S's D scheme showed this was unlikely.

Finally, our investigator noted that whilst the advice did expose Mr S's DB pension to investment risk, the couple retained three sources of secure, guaranteed income (two state pensions and Mrs S's DB scheme) that would meet the entirety of household expenditure from 2030 onwards, as such the level of risk was deemed appropriate.

Mr S did not agree with his representative stating that the mortgage was originally taken out to run into retirement and that Mr and Mrs S were comfortable with this, and that the decision to repay the mortgage was a diversion from this original plan. Further, the option to downsize was available given the £400,000 value of the home – an option which was a more realistic approach.

The desire to provide amended death benefits to Mrs S was also challenged as a justification for transfer.

Finally, Mr S's representative stated that the desire to retire at 60 was a luxury that their circumstances did not allow for, with the transfer of Mr S's DB scheme being too drastic a step to meet this objective.

Our investigator explained why they did not believe these points merited a change in outcome, and as no agreement could be reached, the case has been passed to me for a final decision.

What I've decided – and why

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

I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for Businesses and the Conduct of Business Sourcebook ('COBS'). And where the evidence is incomplete, inconclusive, or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

The applicable rules, regulations, and requirements

The below is not a comprehensive list of the rules and regulations which applied at the time of the advice but provides useful context for my assessment of SJP's actions here.

Principle 6: A firm must pay due regard to the interests of its customers and treat them fairly.

Principle 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.

COBS 2.1.1R: A firm must act honestly, fairly, and professionally in accordance with the best interests of its client (the client's best interests' rule).

The provisions in COBS 9 which deal with the obligations when giving a personal recommendation and assessing suitability. And the provisions in COBS 19 which specifically relate to a DB pension transfer.

Having considered all of this and the evidence in this case, I've decided not to uphold the complaint for largely the same reasons given by the investigator.

The regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6 that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, SJP should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr S's best interests. And having looked at all the evidence available, I'm satisfied it was in his best interests.

Financial viability

The TVC completed in September 2020 sought to assess the value of the guarantees being given up should Mr S transfer his DB scheme.

It showed the potential cost to Mr S should he try to purchase the same benefits as those provided by the DB scheme from an insurer, the critical yield required for the transferred funds to match those provided by the DB scheme, and how long the transferred funds would last if the scheme income was withdrawn each year from age 65 (assuming certain growth rates).

The analysis shows that the transfer was likely to lead to lower overall retirement benefits for Mr S, with the evidence on file showing that Mr S was fully aware of this. However, the TVC analysis was based on the income provided by the DB scheme at age 65, and was therefore not relevant to Mr S.

Mr S had a clear desire to retire within the next 12 months and as such his circumstances were not reflected in the TVC.

Mr S's choice was between taking the early retirement scheme benefits or transferring out.

It is the differences between these choices which must be assessed to establish the suitability of the SJP advice. This is covered in the flexible access section below.

Other reasons given in support of transferring the DB scheme

Death benefits

I have carefully considered the commentary on file regarding Mr S's desire to retire early and ensure Mrs S had flexible access to any residual pension value.

Sadly, Mr S's father had passed away shortly after his retirement at age 65, with the dependents pension provided for Mr S's mother insufficient to meet her needs. Mr S was recorded as wanting to "avoid making the same mistake".

This is not an unusual or unreasonable desire, and whilst I can appreciate that Mr S's stance, I do not consider this to be a strong rationale in support of the transfer.

The file notes that Mr S was in fact in good health, with there being no additional commentary to clarify why Mr S thought he may have a reduced life expectancy.

Additionally, it is also the case that Mrs S had her own DB scheme to rely on and as such I have focussed on the additional reasons given in support of the transfer advice.

Flexible access

A key driver for the transfer advice was the desire for Mr S to access his tax-free cash and use this to repay his mortgage, allowing both Mr and Mrs S to retire in 2021 debt free, with a reduced need for monthly income.

Repaying the mortgage would reduce outgoings by around £900 a month and leave an income requirement of around £21,500, with additional spending on travel budgeted at £12,000 a year.

Documentation on file shows that following the transfer, tax-free cash was taken, and the mortgage was repaid, with a £20,000 lump sum withdrawn to fund a trip to America.

Before recommending the transfer of Mr S's DB scheme, SJP considered whether these objectives could be met if the DB scheme were retained.

The tax-free cash available to Mr S from his DB scheme would allow his mortgage to be repaid and leave him with around £15,000 in cash savings. This would be less than Mr S's desired emergency fund and would not leave enough capital to fund travel plans in retirement.

Additionally, the income provided by the DB scheme would leave an income shortfall each year.

Mr and Mrs S did have the option for Mrs S to also access her DB scheme early. Quotations requested by our investigator show that if this were accessed early it could provide a tax-free lump sum of £12,000 with income of around £7,000 a year. (These figures are a slight overestimate as they are based on retirement in 2024, however are deemed sufficient for these purposes).

If this were accessed early, Mr and Mrs S would have capital savings of around £27,000 after repayment of the mortgage and income of around £23,500 each year.

This would provide the required emergency fund and ensure Mr and Mrs S could meet all their income needs each year from secure, guaranteed income.

However, ongoing luxuries, such as travel to America, could not be funded from capital on a year-by-year basis.

Our investigator concluded that Mrs S accessing her DB scheme early to make up the shortfalls was not a viable alternative, and I have reached the same conclusion.

Firstly, whilst accessing both DB schemes would have allowed Mr and Mrs S to meet their ongoing income needs this would have come only after significant actuarial reductions in the benefits provided by Mrs S's scheme. By transferring Mr S's DB scheme and retaining Mrs S's, these significant reductions were avoided.

Additionally, even if both DB schemes were accessed, the capital available to Mr and Mrs S would not have allowed them to retain an emergency fund and pay for the additional expenditure (predominantly travel) during retirement. I accept they could have used the modest disposable income to save additional capital over time, however this would be at odds with their stated desire to enjoy travel etc whilst early in retirement.

To meet their objectives SJP recommended a transfer of Mr S's DB scheme, and whilst this resulted in lost guarantees, and exposed a significant proportion of Mr and Mrs S's retirement provision to investment risk, I believe this level of risk was appropriate.

Whilst pensions are generally intended to fund retirement for the rest of a person's life, Mr and Mrs S were in the fortunate position whereby these funds were only required to support their essential expenditure for around 10 years. From 2030 onwards state pensions and Mrs S's DB pension (assuming it was retained) would cover all their income needs.

As such, with a relatively limited timeframe where Mr and Mrs S would be reliant on the retained pension balance (of around £578,000) I have concluded the level of risk involved in SJP's advice was suitable.

I have considered whether SJP should have recommended Mr S retain his DB scheme and utilise the available lump sum to make a partial repayment of his mortgage. This would reduce the level of debt taken into his retirement, reduce the monthly mortgage payment, and allow a higher cash reserve to be maintained.

For example, if half the mortgage was repaid Mr S would retain around £107,000 in cash savings once the residual tax-free cash was added to the existing cash savings.

However, in this scenario Mr S would still owe around £92,500 and would also need to fund an ongoing monthly mortgage payment which could be around £450 per month (approximately half the current payment assuming the same terms could be secured). Income would still be limited to the £16,500 provided by the DB scheme and as such the £5,000 annual income shortfall (if the mortgage were fully repaid) would double to around £10,000.

This income shortfall would exist over the 9 / 10 years until further pensions (state and Mrs S's DB scheme) became payable and would erode the majority of the retained cash reserve over this time, limiting the couple's emergency fund and ability to spend on luxuries. As such I do not believe a partial repayment of the mortgage would have been a viable or attractive option.

To try and ensure the above analysis is as reasonable and appropriate as possible I have additionally considered whether SJP's assessment of Mr and Mrs S's income needs in retirement (used in the analysis above) was itself reasonable.

The fact-find contains a detailed income and expenditure section, and the analysis of income in retirement correctly removes the mortgage relates costs.

From there, the remainder of the household expenditures were left unchanged, with an amount of £500 per month (joint) for discretionary spending included in SJP's expected expenditure assessment.

It can be difficult to assess what expenditure a person may have in retirement. Some spending such as travel costs associated with work etc will reduce, however others will increase. Household bills can often rise as more time is spent at home rather than work, and with increase leisure time, these costs can also rise.

It may be the case that Mr and Mrs S's actual expenditure in retirement is different to the figure agreed with SJP in 2020, however, whether the figure turned out to be 'correct' or not is not relevant. The correct figure was not something SJP (or Mr and Mrs S) could know at the time. My decision is based on whether the figures used in SJP's assessment were reasonable based on the information available at that time, and in this regard, I can find nothing unreasonable in the expected expenditure figures used.

As part of this I have considered the fact that the income withdrawals commenced by Mr S in April 2022 were relatively modest at £1,250 per month, that this level of income would have been provided by his DB scheme had it been retained, and considered whether this suggests the assessment of Mr S's income needs in retirement were overestimated.

However, I do not believe this is a safe assumption to make. The income commenced in April 2022 was at a level chosen by Mr S at that time, with Mr S holding a significantly higher cash reserve level than would have been the case had the DB scheme been retained. The high cash balance that the transfer allowed Mr S to retain (after repaying the mortgage), and the interest this cash balance may have attracted, would have had an influence on how much income Mr S chose to withdraw.

As such I do not consider the level of income withdrawn by Mr S to be a material consideration in this case.

I have noted the additional points made by Mr S's representative following our investigators findings, however, do not believe these merit changing the outcome reached.

Whilst I appreciate that the mortgage was originally set up to run past Mr S's retirement, the documentation from 2021 explains why this was done, with an extended term originally agreed to keep monthly costs low. I do not consider Mr S's desire to repay the mortgage at retirement using a pension lump sum to be a deviation from any original plan, the notes from 2021 confirm this was always intended.

I accept that downsizing was an option available to Mr and Mrs S, however I do not consider it unusual or unreasonable for Mr and Mrs S to prioritise retaining the family home over and above retaining the guaranteed pension benefits offered by Mr S's DB scheme, especially when three other sources of guaranteed income would remain after transfer.

Finally, I have considered the point that Mr and Mrs S's desire to retire early was a luxury that their circumstances did not allow for, with the transfer of Mr S's DB scheme being too drastic a step in order to meet this objective. Here I again would disagree. Whilst the loss of guaranteed benefits must be considered carefully, I have concluded this was a suitable level of risk in this case, given the other sources of income that would become payable in future.

Mr and Mrs S were in the fortunate position where they could afford to take the level of risk recommended by SJP to meet all their financial objectives and retire early, safe in the knowledge that state pensions and Mrs S's DB scheme were still available to them in future.

Overall

The financial analysis completed at the time of advice shows that the transfer was likely not in Mr S's financial interests, with the transferred funds unlikely to be able to provide benefits

at the same level as the DB scheme would have done. Additionally, I believe the way in which the scheme / transferred funds would provide benefits to Mrs S (should Mr S pre-decease her) is a weak argument in support of the transfer.

However, the file documents that Mr S had clear goals for his early retirement with the repayment of his mortgage and increased expenditure on travel being key.

The retention of the DB scheme would not have allowed both objectives to be achieved.

As I have explained above, the retention of Mr S's DB scheme would have allowed the mortgage to be repaid, however, based on Mrs S also retiring at that time, there would be an income shortfall and significantly reduced cash reserve.

Mrs S could have taken her DB scheme early to cover the income shortfall, however there would have been significant actuarial reductions.

As such, the transfer of the Mr S's DB scheme allowed all of Mr and Mrs S's objectives to be met, meaning Mrs S could retain her DB scheme until age 65, avoid the actuarial reductions, and exposed Mr and Mrs S to a reasonable level of risk. The transferred DB scheme could be used to meet their ongoing needs, with the knowledge that from 2030 onwards all household income would be met by guaranteed income (state pensions and Mrs S's DB scheme).

Further, in this case, whilst I have based my decision primarily on the contemporaneous evidence from the time of advice, I can see from subsequent documentation and evidence that Mrs S did retire in 2021, that the tax-free cash was taken, and that lump sums were accessed to fund travel to New York.

Suitability of the recommended pension and underlying investments

Whilst a SIPP can be a more expensive product than simpler pension products (such as a stakeholder pension) a simpler option was not available to Mr S in this case. The need to access his tax-free cash whilst retaining the balance within the pension meant a SIPP product was required.

I have also considered the underlying funds recommended by SJP and the level of risk these exposed Mr S to and concluded these were also suitable.

Mr S did have some investment experience and was looking to retain the underlying investments over the longer term, as such the recommended Conservative Portfolio and the Managed Funds Portfolio are considered appropriate.

In Summary

As per the rationale above I have concluded that the recommendation to transfer was suitable as this allowed Mr and Mrs S to both retire early, retain the family home, repay their mortgage, and fund their desired retirement expenditures, whilst not exposing them to an unsuitable level of long-term financial risk.

My final decision

In line with the commentary above I am not upholding this complaint and require no further action from St. James's Place Wealth Management Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or

reject my decision before 19 December 2024.

John Rogowski
Ombudsman