

The complaint

Mr C complains that St James's Place Wealth Management (SJP), his financial adviser and pension provider, has misled him since 2017 about the transfer of his defined benefit (DB) pension to a personal pension. He said that SJP told him to wait to transfer as the amount would go up. And that the misinformation had stopped him from taking his DB pension for several years.

Mr C also said that SJP told him the transfer could be added to his existing pension with it. But that it then retracted its offer and said it wouldn't advise him to transfer his DB pension to a personal pension.

SJP has offered Mr C £650 compensation and agreed to compare the Cash Equivalent Transfer Value (CETV) of April 2021 to the value when Mr C does transfer. But Mr C doesn't consider this is a satisfactory resolution to his complaint.

What happened

Mr C medically retired from work in 2014. He said his employer gave him a lump sum which he placed into a drawdown account with SJP.

SJP said that it had included the value of Mr C's forecast DB pension in cashflows for him as part of his total income since 2014. It said that Mr C had a chronic medical condition which had enabled it to get him an enhanced pension offer with one of his previous employer's pension schemes in 2014. And that it had worked with Mr C's medical consultant to approach the trustees of Mr C's remaining DB scheme to see if they were prepared to offer any enhanced terms on the grounds of his health. It said that Mr C didn't qualify for an enhancement to his remaining DB pension at that time.

SJP also said that it had looked into enhanced annuities for Mr C in 2014 when it had assisted him with his other pension. But that his condition hadn't led to any enhancement, as he was expected to have a normal lifespan.

Mr C had a retirement planning discussion with SJP on 7 December 2018. His immediate objectives were recorded as wanting to raise capital from his pension funds. SJP produced a report dated 24 December 2018 which confirmed it had made recommendations to Mr C which he'd agreed with, although he'd rejected its initial recommendation to release capital from his premium bonds. Instead, he would crystallise pension funds currently held with SJP so he could access the TFC he wanted.

The 2018 report stated that Mr C had a DB pension that was estimated to pay him an annual pension of £1,873 from age 65. The report also stated: "*You pointed out that you have a final salary pension and your state pension which you will be able to draw on in the future*". The DB pension was considered as a source for capital but it was noted that drawdown wasn't available.

SJP held an internal discussion between February 2020 and April 2020 to see if it was possible to transfer Mr C's DB scheme to SJP, despite it not meeting its usual minimum

threshold. Mr C's adviser said that he'd previously advised Mr C to leave his DB pension untouched. He also said that he'd told Mr C that there would be a charge for the assessment of a potential transfer and that the assessment would likely show that the transfer wasn't in his interests. But that Mr C had said that because of his illness and the fact that he wasn't married to his partner, he preferred his pension assets to be under his direct control.

SJP agreed to allow the transfer to be considered, given Mr C's existing relationship with it. And because he wasn't dependant on the funds in retirement, although he still needed to access them. But it said that its concession didn't guarantee the suitability of the transfer, which would need to be appropriately assessed.

SJP said that it received detailed DB pension information on 18 May 2020 which suggested that a cash commutation of around £42K was available. But that this was later confirmed to be an error by the pension provider as the maximum commutation amount was £30K.

Mr C said that on 8 December 2020, he was told that the CETV for this pension was £49K. Mr C said that SJP advised him to wait before taking it as it might increase in value. And that once he took it, it should be added to his current drawdown pension, after he'd taken 25% tax-free cash.

The trustees of Mr C's remaining DB pension scheme provided a quotation on 8 December 2020 which approved the request for his benefits to be paid with effect from 1 December 2020, unreduced for early retirement, on the ground of ill health. The pack included the forms Mr C needed in order to take the early retirement pension.

Mr C had a retirement planning session with SJP on 12 February 2021. A report was produced on 24 February 2021. The report said that Mr C's objectives were to raise capital from his pension funds. And then to draw income from his pension. It noted that he had a DB pension that was estimated to pay him an annual pension of £1,873 from age 65.

The report recommended that Mr C met his objectives by crystallising funds already held with it. The DB pension was considered but it was noted that drawdown wasn't available. The report stated that Mr C had agreed with this recommendation.

Mr C said he got an updated CETV in March 2021 of £50,859.74. He said that SJP again told him to wait as it felt the value would increase further. He said he got a further CETV on 9 April 2021 of £51,893.39 but said that SJP still told him to wait.

Mr C said he asked SJP for an update in November 2021. He said he was told he had a different adviser at this point. And said he tried to explain to his new adviser how he'd asked for the value of his DB pension to be released on previous occasions.

Mr C's new adviser wrote to him on 3 May 2022. He said that although there was usually an allowance to commute a DB pension under £30,000 or under ill health, the previous SJP adviser had been trying to arrange for commutation under ill health, but hadn't been able to get the pension provider to agree. So he outlined the two options he felt Mr C had for the DB pension. These were:

1. To continue to try to get the pension provider to commute the pension and get the lump sum to Mr C, or
2. For Mr C to start his DB pension now.

The adviser explained what Mr C would have to do to follow either of the options. And outlined the various options available if he decided to take the pension.

Mr C replied to say that the first SJP adviser had told him that he was waiting for the final value from his DB pension provider after Mr C had said he wanted a lump sum. He said he'd completed a retirement pack which showed an amount of around £56K. Mr C said he needed the money as soon as possible.

Mr C's new adviser wrote to him on 5 May 2022. He said that SJP didn't normally allow pensions worth less than £300,000 to be transferred in. And that because of that, the first adviser had been trying to get the pension provider to commute the DB pension so that Mr C could access the money. But that because the transfer was larger than the scheme's commutation limit, the first adviser had been trying to get the pension provider to make an exception. He said this was all taking time. And to stop this from going on indefinitely, he suggested that Mr C completed his pension provider's forms to access his tax-free cash and the regular pension payments.

Mr C said that his first SJP adviser hadn't told him that SJP wouldn't allow him to transfer his DB pension into his drawdown pension unless the value was greater than £300K. He felt that his new adviser was going to ask his pension provider for an updated transfer value. Mr C said this had been going on for more than three years.

Mr C's new adviser told him that he understood that Mr C was going to send the discharge paperwork to the DB pension provider to start the regular income payments. He asked Mr C to let him know if he wanted to take a different course of action.

Mr C raised a complaint with SJP in June 2022. He felt the transfer hadn't progressed since 2020. In the complaint form Mr C sent to SJP, he said he should've just taken the CETV offered in April 2021.

SJP issued its final response to the complaint on 26 October 2022.

SJP said that it couldn't say for certain what was said during the meetings between Mr C and his first SJP financial adviser. But said that Mr C's DB pension provider had confirmed in its 8 December 2020 letter that Mr C's application for payment of '*an early retirement pension on the grounds of ill health, not being subject to the normal reduction for early payment*', had been approved. It said that this was a notable increase from the scheme's normal retirement date in 2027. And that the first adviser considered that no further action was required as he felt that Mr C didn't intend to take income from the DB pension at that time as he didn't want to incur unnecessary income tax deductions.

SJP said that the first adviser had requested a further claim pack from the DB pension provider in March 2021, at Mr C's request. And that this was received in April 2021. It said the first adviser had said his advice to Mr C was not to transfer the scheme to SJP, but that he should consider taking the pension income from the scheme.

SJP apologised if this hadn't been clearly communicated to Mr C. And said that it could see he was expecting further information. But confirmed that it wasn't possible for Mr C to transfer his DB pension into his SJP pension, due to its size.

SJP said that it wasn't certain this had clearly been explained to Mr C. So said it as a gesture of goodwill it would offer to review any subsequent transfer value Mr C decided to take against the value of the scheme if the CETV of £51,893.39 been transferred to another provider by 9 June 2021, as long as he did so within the next six months. SJP explained that it had chosen this date as it felt it would've been a reasonable timescale for Mr C to have arranged a transfer if he'd wanted to do so when the CETV was received in April 2021 and if it had been clear that the CETV couldn't be transferred to SJP.

SJP also offered Mr C £500 for the distress and inconvenience the complaint had caused him, plus a further £150 for the time it had taken it to reply to the complaint. It said the total offer of £650 was made as a gesture of goodwill.

Mr C wasn't happy with this response. So he brought his complaint to this service. He said he had planned to use the CETV as income for a couple of years. He felt he'd been waiting for the transfer to be sorted since 2020. And that if it wasn't now possible to transfer his CETV to his drawdown pension because it was below £100K, he'd have to access more of his drawdown fund. Mr C felt that SJP hadn't acknowledged that it had made, and continued to make, significant errors in its advice. He wanted it to accept that it had got things wrong. He also said that the last three years had been very stressful. So didn't feel that the amount offered for distress and inconvenience was enough under the circumstances.

Our investigator didn't think the complaint should be upheld. Based on the documentary evidence she'd seen, she felt that SJP had acted correctly. She also felt that the compensation it had offered was more than this service would've asked it to offer. Our investigator also said that although SJP had offered to carry out a loss assessment based on the April 2021 CETV, this service wouldn't have asked it to conduct such an assessment.

Mr C didn't agree with our investigator. He said he'd been misled by SJP. He felt it owed him as a minimum four to five years of back pension from his DB pension.

Mr C told this service that he had now taken out his DB pension. So we asked him to confirm when he'd started to take the pension. And the amount of TFC and pension he was receiving.

Mr C told this service that he was receiving an annual pension of £3,082.47. This was paid monthly in advance on the last day of each month. He didn't state when these payments had first started, but the paperwork he shared with this service suggested his pension payments had effectively started on 1 April 2023..

Mr C also said he received a TFC lump sum of £8,804.29 on 28 April 2023.

As agreement couldn't be reached, the complaint came to me for a review.

I issued my provisional decision on 26 June 2022. It said:

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

Having done so, I don't intend to uphold it. Although I largely agree with our investigator, I consider that Mr C understood that a transfer assessment would be carried out, but one wasn't. However, I consider that it was reasonable that SJP didn't carry out such an assessment. I know my decision will be disappointing for Mr C. I'll explain the reasons for it.

As our investigator noted, this service's role is to identify if a business has made an error and if it has, put the consumer back as far as possible into the position they should've been in if the error hadn't occurred.

In this case, SJP and Mr C don't agree about what it told him about his DB pension since 2020.

This service can't know exactly what SJP told Mr C. And although we take into account the testimony that's been provided, we place more weight on the documentary evidence available.

SJP said it wasn't certain its advice had been clearly communicated to Mr C. It apologised for this. And offered him a total of £650 compensation for the distress and inconvenience it had caused him, as a gesture of goodwill. £500 of this was in relation to the complaint issue and £150 was in respect of the time it'd taken to respond to the complaint.

SJP also offered to review any subsequent CETV Mr C decided to take against the value of the scheme if the 9 April 2021 CETV of £51,893.39 had been transferred to another provider by 9 June 2021, as long as he did so within the next six months.

SJP said it had chosen this date as it felt two months was a reasonable timescale to arrange a transfer if Mr C had wanted to do this after receiving the 9 April 2021 CETV if it had been made clear to him that he couldn't transfer to SJP.

I first considered if SJP told Mr C it would arrange for his DB pension to be transferred to a personal pension.

Did SJP tell Mr C that it would arrange the transfer?

I acknowledge that Mr C discussed transferring his DB pension to a personal pension with SJP. I say this because I can see that SJP carried out a fact find in 2018 which noted the following:

"We further discussed his [name] DB scheme and [name] advised that it would be difficult to match these benefits outside of the scheme. He may get an uplift to GMP as a result of the Lloyds case. Review in 6 months".

This shows that Mr C talked to SJP about his DB pension at least from 2018. But that its advice was not to transfer at that time, but to review again in six months to check if there had been an uplift to the pension available to him. It appears that Mr C may have felt that this meant that SJP had advised him to transfer, but I consider that the wording clearly states the DB transfer would be unlikely to be recommended.

I've no evidence of any discussions about the potential transfer before this date.

I can also see that Mr C talked to SJP about his DB pension in 2020. But I've seen no evidence that SJP agreed to the transfer, or that it said it would be suitable for Mr C. Instead, SJP's internal emails show that Mr C's adviser tried to find out if it was even possible to transfer Mr C's DB pension to SJP, given it didn't meet its usual minimum threshold. The internal emails show that the adviser had previously advised Mr C to leave his DB pension untouched. And that if Mr C insisted on looking into a possible DB transfer, there'd be a charge for the assessment, which would probably show that a transfer wasn't in his interests. But that Mr C had still wanted to see if it was possible.

SJP agreed to allow the transfer to be considered. But said this didn't guarantee the suitability of the transfer, which would need to be appropriately assessed.

However, shortly after the concession to consider the suitability of the transfer was granted, Mr C's former DB scheme's trustees told SJP that it might be possible for him to fully commute all of his pension and receive a cash lump sum of around £42K.

I'm of the view that in light of this new information, the adviser didn't then carry out the transfer assessment. I think this was reasonable under the circumstances. I say this because the full commutation of the DB scheme seemed to meet Mr C's objectives. And because the transfer assessment would cost Mr C money, but be unlikely to result in a successful transfer, as SJP had already noted that it would "be difficult to match these

benefits outside of the scheme”.

I can't see that Mr C ever paid for the transfer assessment. And Mr C's adviser also said that he'd done no DB work whatsoever for Mr C. So I'm satisfied that no such assessment was ever carried out. And, as I have said, I consider that this was reasonable under the circumstances. But I also have no evidence that Mr C's adviser clearly explained this all to him.

Mr C's adviser looked into the full cash commutation of the DB scheme pension, but it came to light that the offer hadn't been correct. However, later that year, Mr C's former DB scheme's trustees approved the request for an unreduced early retirement pension on the grounds of ill health.

This was a considerable concession, so I'm satisfied that it was reasonable for the adviser to assume that Mr C would take the offer, rather than pursue a transfer value. In any event, it would now be even less likely – given the enhancement of the pension scheme benefits if Mr C took a pension – that the transfer assessment would lead to a recommendation to take the CETV.

I also note that Mr C told this service that he had asked SJP to ask his former DB scheme provider to offer him unreduced early retirement within that scheme. So I consider that this shows that Mr C was looking into his options. And that he hadn't definitively asked SJP to arrange a transfer.

Therefore I agree with our investigator that there's no documentary evidence that Mr C's pension was ever in the process of transferring from his DB scheme to a personal pension.

I acknowledge that Mr C considers this shows it must've been SJP's fault as none of the paperwork required for a DB transfer was produced. I can see why he has this view given it appears he pushed for a transfer assessment. But I'm satisfied that SJP did what it could to help Mr C access his DB pension in the most appropriate way for him.

I've found no documentary evidence of unclear or misleading information being provided to Mr C. Nor have I found any documentary evidence that SJP told Mr C to wait before transferring his DB pension. However, I've also found no evidence that SJP explained to Mr C why it hadn't carried out the transfer assessment it appears he requested after gaining a concession to do so.

However, as I noted earlier, SJP has acknowledged that it wasn't certain its advice had been clearly communicated to Mr C. It has apologised for this. And offered compensation as I outlined above. So I next considered whether I thought this was fair and reasonable under the circumstances.

Is SJP's offer fair and reasonable?

I'm satisfied that SJP has now clearly explained that it couldn't recommend Mr C to transfer his DB pension. And that if he still wanted to do so, he need to seek advice elsewhere.

Our investigator explained in her view why it was reasonable for SJP to take this stance. And that the industry regulator's stance is that: “a firm should start by assuming that a transfer, conversion or opt-out will not be suitable”, unless it can clearly demonstrate that the transfer is in the client's best interests. I agree with her that transferring out of a DB scheme is unsuitable for most consumers due to the extremely valuable guarantees they provide. I also agree that SJP has the right to set its own terms and can therefore refuse to carry out a DB transfer based on the size of that transfer.

When Mr C complained to SJP, he said he should've just taken the CETV offered in April 2021. SJP effectively offered to put Mr C in this position when it made its offer to review any subsequent transfer Mr C might decide to take. But Mr C has told this service that he has now started taking his DB pension from his former scheme. Therefore, in the end, he's decided against transferring his DB pension to a personal pension. And it's no longer possible for SJP to carry out the loss assessment it offered.

Overall, although Mr C's adviser didn't carry out a transfer assessment after being given the concession to do so in 2020, I'm not persuaded that doing so would've resulted in advice to Mr C to transfer his DB pension. I say this because Mr C's adviser said that his advice wouldn't have been to transfer the DB pension. And because it was extremely unlikely that the transfer assessment would've shown the transfer to be in Mr C's best interests. I also say this because Mr C didn't in the end transfer his DB pension, despite SJP making him an offer which would have effectively provided him with the transfer amount he said he should've had.

Therefore I consider that SJP's offer for financial redress was more than fair.

Distress and inconvenience

SJP has offered Mr C £500 compensation as a gesture of goodwill for the distress and inconvenience the complaint had caused him. And a further £150 for the time it had taken it to reply to the complaint.

SJP said that it was making this offer as it wasn't certain its advice had been clearly communicated to Mr C. It apologised for this.

Mr C told this service that the last three years had been extremely stressful for him. And that the complaint had affected his general mental health. He felt that as the situation had been going on for so long, the £650 compensation SJP had offered him wasn't enough.

I'm very sorry that Mr C has suffered in this way. But, as I've noted above, I've seen no documentary evidence that SJP ever told Mr C that his DB pension was in the process of being transferred. Therefore I'm satisfied that the £650 compensation SJP has offered Mr C is more than fair and reasonable under the circumstances.

As I'm satisfied that SJP's settlement offer is fair, I don't intend to uphold this complaint.

Response to my provisional decision

SJP didn't reply to my provisional decision.

Mr C said he was extremely disappointed with my decision. He felt that SJP had admitted to errors and apologised on many occasions. He didn't feel that the £650 he'd been offered was enough under the circumstances. But said that he now wanted to accept this sum.

Mr C said that the original advisor had offered to "sub" him a significant amount of money given the delays. He felt this would be something I hadn't been told by the original adviser, and felt that I wouldn't be able to consider this as he had no written evidence. He felt that I was working on the theory: *"if it's not written down, it didn't happen"*.

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 considered Mr C's additional point. It's not the case that we assume something didn't happen, just because there's no written evidence. But it is true that without any documentation or corroborating evidence, it's unlikely that this service will base any decision solely on the testimony of either party. In any event, it's unlikely my decision would change if I had documentary evidence that the original adviser had offered to help Mr C in this way.

As no new information has come to light to change my opinion, I remain of the view I set out in my provisional decision.

My final decision

For the reasons set out above, I don't 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 8 August 2023.

Jo Occleshaw
Ombudsman