DRN-3736148

The complaint

Mr W complains that Stephenson Johnson Financial Planning Ltd (SJFP) gave him unsuitable advice in relation to the transfer of his defined benefits pension to a SIPP and subsequent purchase of unquoted shares.

This complaint is brought on behalf of Mr W by a claims management company but to keep things simpler, all correspondence will be referred to as coming from Mr W.

What happened

In 2008, Mr W contacted SJFP in order to obtain advice in relation to the potential transfer of his previous employer's workplace pension into a SIPP, with the intention of investing in a business involved in commercial property with some acquaintances. In January 2009, he was provided with a suitability report advising against this course of action, which was followed by a letter suggesting a suitable SIPP should Mr W have wanted to transfer anyway as an insistent client.

The transfer did not go ahead at that time, and in 2013, Mr W revisited this. Mr W received advice in relation to the transfer from a third party. The suitability report provided by the other adviser includes a number of statements indicating that Mr W wanted to transfer with the intention of purchasing shares. The report states "*you stated you wanted to proceed anyway because you wished to invest in shares*" and "*you were adamant you wanted to transfer anyway*". His attitude to risk at that time was recorded as 9 out of 10, adventurous. The report states that the transfer was recommended considering Mr W's experience in share dealing and his wish to take control of his pension funds.

The recommendation was for a James Hay SIPP, with the money invested in a self-trade account, reflecting Mr W's intention to self trade in shares. Following the transfer, Mr W approached SJFP who helped facilitate the purchase of shares in a commercial property company, which was similar to what he had wanted to do back in 2008 and 2009. SJFP reiterated their advice from 2009 that the purchase of the shares was high risk, and advised him of lower risk options, such as investment bonds and managed funds.

In early 2017, due to the positive performance of the shares within his SIPP, Mr W transferred another workplace pension and purchased further unquoted shares in the same company within his SIPP. SJFL were not involved in this transaction. This transfer and subsequent share purchase are not part of this complaint.

In 2019, the company went into liquidation, and Mr W has suffered a financial loss as a result.

In July 2021, Mr W complained that the recommendation was unsuitable for him for a number of reasons. SJFP did not uphold the complaint, stating that they only acted in relation to the purchase of the shares, they only did so on an insistent client basis, and that they explained the risks to Mr W on several occasions. Mr W did not accept SJFP's recollection of events, and stated that the business did not fulfil the requirements of the

FCA's Conduct of Business Handbook (COBS) in relation to insistent clients. The complaint was referred to this service. Having reviewed the evidence, the investigator agreed with SJFP that Mr W did not receive advice from SJFP to transfer his previous employer's pension to a SIPP and that Mr W was highly motivated to invest in the specific company's unquoted shares and would have proceeded with this course of action regardless of the actions of the adviser.

Mr W remained unhappy with this outcome and the complaint has therefore been forwarded to me for a final decision
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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 complaint includes a number of points, some of which relate to the transfer of his previous employer's workplace pension and the loss of guaranteed benefits, and some relate to the purchase of the unquoted shares within Mr W's SIPP.

Firstly, I will deal with the element of the complaint relating to the transfer of Mr W's previous employer's workplace pension to a SIPP in order to purchase unquoted shares.

Mr W first contacted SJFP in 2008 in order to discuss the possibility of transferring his previous employer's workplace pension benefits into a SIPP to allow him to invest in a company with some acquaintances. SJFP recommended against this course of action, and explained the reasons it was unsuitable for Mr W. The fact find completed in 2008 documents a number of statements indicating Mr W's willingness to be adventurous with his previous employer's pension due to his other pension provision, and desire to invest in property for the long term. The suitability report dated January 2009 demonstrates that SJFP recommended against the transfer, however they did instigate an insistent client process and referred Mr W to a SIPP provider for the transfer. As noted above, the transfer did not go ahead.

In 2013 Mr W again contacted SJFP in order to revisit the transfer of the pension with the intention of investing along similar lines. A third party carried out an analysis and recommended the transfer of Mr W's previous employer's workplace pension to the James Hay SIPP. I note that their suitability report includes a number of statements indicating that Mr W wanted to transfer with the intention of purchasing shares. The report states "*you stated you wanted to proceed anyway because you wished to invest in shares*" and "*you were adamant you wanted to transfer anyway*". His attitude to risk at that time was recorded as 9 out of 10, adventurous. The report states that the transfer was recommended considering Mr W's experience in share dealing and his wish to take control of his pension funds. The recommendation made by the other adviser was for a James Hay SIPP, with the money invested in a self trade account, reflecting Mr W's intention to self trade in shares.

I can find no evidence that SJFP recommended at any time that Mr W transfer his previous employer's workplace pension into a SIPP. I therefore do not uphold this element of the complaint.

I have next considered the elements of the complaint relating to the purchase of unquoted shares within Mr W's SIPP.

There are multiple pieces of evidence within the file indicating that Mr W was extremely motivated and keen to purchase the shares within the unquoted company which had been set up by acquaintances of his, and this interest persisted over a number of years.

It is clear that Mr W understood the level of risk being undertaken by this transaction, was willing to take that level of risk and believed he had capacity to take the risk. The fact find completed in December 2008 states "*Willing to be adventurous with [company pension] due to other provisions in place for long term/retirement. 'Motivated' in respect of [company pension], everything else ok as it is. Happy with existing [current workplace] pension and projections he has received along with state pension these are deemed ok to live on in retirement plus spouses company pension and state pension also. Would like to invest in property for the long term. Prepared to take high risk for best returns with [company pension]".*

The meeting notes from September 2013 confirm that the SJFP adviser expressed his concern relating to the level of risk being undertaken by the transfer, and that Mr W was provided with a risk warning sheet to sign within the application for the purchase of the shares. This stated *"I accept that unquoted shares are a very high risk investment and I may lose all of the money invested.*

I am aware that there is not an official market for the shares that might make them difficult to sell. I am also aware that the level of profit the company makes will dictate the attractiveness of the shares to any purchaser and therefore if the company declines to pay a dividend or the profits of the company do not meet expectations then the shares might be unattractive to any prospective buyer which might make them difficult to sell.

I fully accept that these and other risks may adversely affect the value of my investment and the company's financial position and fully accept the risk in making the investment. You should not invest in unquoted shares if you do not understand or are not comfortable with the extent of your exposure to the risks. You should carefully consider whether such investments are suitable for you in light of your experience, objectives, risk appetite, financial resources and other relevant circumstances."

The meeting note outlines the fact that the conversation centred around the very risky nature of the planned course of action, and the alternatives that could be used to diversify more and spread/mitigate the risk. It also states that the adviser read the James Hay risk warning text (above), and states *"[Mr W] and [other person] were polite in their responses but I sensed they were tired of my negative attitude and labouring these points. I think they probably feel my protestations and repetition are bordering on an insult to their intelligence. Each conversation ended amicably enough with both confirming their understanding of the "insistent client" position which applies, namely that should they go ahead, it is against my advice etc."*

I have considered whether SJFP went far enough in making Mr W aware of the risks involved in his desired course of action in purchasing the unquoted company shares and the potential impact on his standard of living in retirement. Having reviewed the evidence, I am satisfied that they did. SJFP reiterated their concerns about the risks on a number of occasions between 2008 and 2013, evidenced in file notes and letters to Mr W, explaining the potential for loss and outlining alternatives.

It is evident that Mr W was highly motivated to invest in the unquoted company shares in order to meet his long term objectives. I have considered what Mr W was most likely to have done if SJFP had not facilitated the acquisition of the shares. Mr W approached SJFP twice in relation to the transfer of his pension, several years apart, indicating more than a passing level of importance to him. I have noted above that Mr W had a particular interest in purchasing the shares within the specific unquoted company in question because it had been set up by acquaintances of his. The file indicates that Mr W trusted and respected the judgement of these acquaintances, which would have supported his willingness to take a risk with his pension fund. I think it is fair to conclude that this would have carried more weight in relation to his desire to invest in the unquoted company than an investment with which he had no personal connection.

The fact find completed in 2008 captures Mr W's views in relation to his pension, and confirms his willingness to be adventurous due to his alternative pension provision, and his long term desire to invest in property. SJFP recorded in meeting notes and a letter to Mr W in 2013 their concerns, and documented Mr W's responses to this. It is evident from this that Mr W was in an informed position, and was eager to proceed regardless of the risk involved. On balance, I think it is fair to conclude that Mr W would have been more likely than not to proceed with the purchase of the shares regardless of SJFP's actions or advice.

Mr W has expressed during his correspondence his concerns relating to the fact SJFP have not provided a formal suitability report outlining their recommendation in 2013. I have considered whether this makes a difference.

Whilst the letter dated 13 August 2013 is not positioned as a formal suitability report, it very clearly expresses the adviser's views in relation to Mr W's proposed course of action for his pension fund, the risks involved with the transaction and is presented in a way that meets the requirements of COBS and the Regulator's Principles to be fair, clear and not misleading. It includes a statement that SJFP "*do not recommend you proceed with your plan to invest your pension wholly or even partly in [company shares] as it is too risky in my opinion*." It also states "*you understand my advice is contrary to your actions. You also understand the reasons for my advice and alternatives mention, but you wish to proceed anyway, in other words against my advice*".

With all the above in mind, it seems to me that the Mr W knew that SJFP was against him purchasing the shares and that he was going to proceed regardless of that advice. In the circumstances, I'm satisfied that SJFP's advice process, and insistent client process, aren't the reasons for Mr W's actions – the evidence indicates that he would have continued regardless.

I therefore do not believe that SJFP fell short of the required duty of care owed to Mr W and do not uphold his complaint.

My final decision

For the reasons stated above I do not uphold Mr W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 6 October 2023.

Joanne Molloy
Ombudsman