

## **The complaint**

Mrs W complains that St. James's Place Wealth Management Plc ('SJP') caused delays when she approached it for advice about transferring her defined-benefit ('DB') occupational pension scheme. The transfer value of her DB pension has since fallen. And she says SJP has therefore caused her a loss.

## **What happened**

Mrs W holds benefits in a DB scheme pension relating to a period of employment between 1981 and 1993. On 22 February 2022, the DB scheme trustees wrote to Mrs W explaining that her normal scheme retirement date was coming up in May 2022 and explained her options for taking her pension benefits.

I understand Mrs W requested a transfer quote from the scheme. On 18 August 2022 the trustees of the scheme provided her with the requested quotation. This said that the cash equivalent transfer value ('CETV') of her DB scheme benefits was £157,024.60. This transfer value was guaranteed until 18 November 2022.

SJP's notes indicate Mrs W spoke to one of its advisers on 9 September 2022. She and her husband were already customers of SJP and held savings and pension accounts with it. SJP said that this meeting was the regularly scheduled annual review it held with Mrs W. And the adviser she met with was not a DB transfer specialist.

The notes of that meeting said Mrs W was looking at her options in respect of the DB scheme and transferring this. The notes also said that she and her husband didn't need the additional guaranteed income from her DB scheme as they had other provisions to meet their needs. SJP's adviser says the CETV Mrs W had previously obtained was provided to it at that time.

I can see that there were several emails between Mrs W and SJP over the weeks that followed, where Mrs W was asking for a meeting to discuss her pension and in which she emphasised that the pension value was only guaranteed for three months.

A first meeting, involving an adviser that could deal with DB pension transfers, was arranged for 2 November 2022 with a follow up meeting just under a week later. SJP sought additional information from Mrs W in that time about her financial circumstances, including her mortgages. SJP says it also asked the trustees of the DB scheme if they would extend the guarantee in relation to the transfer value, but they declined.

The guaranteed CETV expired before SJP provided either abridged or full advice. SJP requested a new transfer valuation from the trustees of the DB scheme on Mrs W's behalf. And I understand it paid the relevant fee for this in December 2022 – as Mrs W was not yet entitled to another valuation for free.

The updated transfer value was provided on 5 January 2023. The CETV had fallen to £107,649.35.

Mrs W complained to SJP about the delays in providing her advice. She said it had always been her intention to transfer her DB scheme pension as this was part of her and her husband's longer term plans. And she said SJP had been aware of this. She was unhappy that advice had not been provided to enable this promptly. And she said this had now caused her a significant loss due to the reduction in the CETV. Mrs W also said this had impacted her plans for her mortgage and as a result she'd had to withdraw funds from her savings to address this.

SJP did not provide a full response to the complaint within the eight-week timeframe set by the regulator. As a result, Mrs W referred her complaint to our service, noting she was also unhappy with the delay in responding to her complaint.

SJP did subsequently issue a response. It said it hadn't provided advice in a timely manner and apologised for this. And it said, it would pay Mrs W £500 to reflect the distress and inconvenience the delay had caused and a further £250 for the delays in handling her complaint. It noted though that advice around a potential transfer of a DB scheme was required to be given by someone that specialises and is authorised to provide that advice. And that this can take time and it offers no guarantees, when giving such advice, that it will be completed within the usual expiry time frame of a transfer valuation. Here advice, either abridged or full, was not completed. So, SJP said it was unknown whether the adviser would've deemed a transfer appropriate and recommended Mrs W go ahead. And if it had advised against a transfer, Mrs W would've found herself in the same position. So, SJP did not agree that Mrs W had been caused a loss and noted she still retained her DB scheme benefits.

Mrs W said SJP's response hadn't fully reflected the timeline of events. She said SJP had been aware that it was her intention to transfer her DB scheme pension for some time. And that, although SJP hadn't provided the advice, it was aware her husband had previously made a similar transfer. Mrs W also said that the original adviser from SJP had asked her to obtain the CETV from the scheme trustees that was provided in August 2022. And it was only because of their error the advice had not been provided in time. Mrs W also said she believed there was no obvious reason why the transfer would not have been recommended based on her circumstances. And she said SJP should be required to show that its advice would've been not to transfer.

One of our Investigator's considered the complaint. He thought the offer made by SJP was fair in the circumstances. It had acknowledged that there were delays. But he also noted that the starting assumption set out by the regulator, the Financial Conduct Authority ('FCA'), is that a transfer from a DB scheme is unsuitable. And as it was unclear if the advice would've been to transfer, the full process could've taken longer than three months anyway and Mrs W was still entitled to her benefits under the DB scheme, he didn't think SJP needed to take any further action.

Mrs W disagreed. She said SJP had been aware for some time of her intention to transfer her DB scheme, which was her retirement provision that she had the right to decide what to do with. Mrs W said that the transfer valuation in August 2022 was only requested after the initial adviser at SJP asked her to obtain this and the meeting where this was handed over was not an annual review. The adviser then failed to proceed with the advice or follow her instruction to transfer until it was too late. Mrs W said she and her husband had already received advice, from another business, and completed the transfer of a DB scheme pension belonging to her husband. So, the appropriateness had already been analysed, and she said SJP was aware of this. And she believed the high CETV meant any analysis of the transfer would've concluded this transfer was appropriate. So, she said she felt a fair resolution was for SJP to complete the transfer as instructed and to pay her the difference between the transfer value and the August 2022 CETV.

The investigator wasn't persuaded to change their opinion, so the complaint was referred to me to make 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 think it is worth starting by saying the role of our service is to informally review and decide individual disputes on a fair and reasonable basis. We aren't a regulator. And our awards are not intended to fine or punish a business. Rather, we look at what has happened in the specific circumstances of a complaint and decide whether a business has made an error, and if so, what the fair way to address that is. And I'd add that, because of the informal nature of our service, I've summarised what has happened. If I don't comment on or refer to everything I've been sent or that has been said this isn't meant as a discourtesy or because I haven't thought about it. Rather it is because my decision will address what I consider to be the key issues in deciding what is fair and reasonable.

Mrs W says she wanted to transfer her DB scheme benefits as this was part of her and her husband's plan and she instructed SJP on the basis it would transfer her benefits. But, while Mrs W might've had a plan in mind, she was required to take regulated financial advice before she could transfer from her DB scheme. A transfer couldn't proceed without her taking this advice.

Mrs W asked SJP for advice about a transfer. And the crux of the complaint is that it took too long to provide this. Mrs W has said that this should've happened much quicker and that the appropriateness of a transfer had already been analysed when she and her husband had taken advice from another business, that resulted in him transferring one of his DB schemes.

But SJP didn't provide that advice. And SJP's role, as a regulated financial adviser, wasn't just to put in place what Mrs W might've wanted. It had to give her suitable advice. There are a number of rules, regulations and requirements that it needed to consider to do that. Not least the provisions the FCA set that deal with making a personal recommendation and a set of provisions that specifically deal with DB pension transfers. These state that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, advising on a potential DB transfer is not straightforward. And I'm satisfied SJP was required to analyse if a transfer was suitable itself, not just rely on what may've happened previously.

Mrs W has said that SJP had been aware of her intention to transfer her DB scheme for some time, this had been discussed with her regular adviser and that the adviser had prompted her to obtain the CETV from her DB scheme in August 2022. Her regular adviser though was not a DB transfer specialist. So, the request for advice needed to be referred on to a suitably qualified specialist adviser to start the advice process.

It doesn't appear to be in dispute that this did not happen as promptly as it should've done. The CETV was provided to SJP on 9 September 2022 but the first point at which a pension transfer adviser became involved was 2 November 2022. And SJP acknowledged, in its complaint response, that it had not started its advice process in a timely manner, that this was not the level of service it would expect and that this was likely to have been distressing, particularly given Mrs W had followed up with it regularly. So, what I need to decide is, what a fair way to address this is.

As I've said, advising on a potential DB transfer is not straightforward. And I can't see that SJP committed to or guaranteed that this advice process would take less than three months – the period of time Mrs W's CETV was guaranteed for. Which I don't think is unreasonable.

SJP's process, in respect of potential DB transfers, is to first provide abridged advice and either conclude, based on more limited information, that a transfer is unsuitable or that it is unclear whether a transfer is suitable and that more information will be needed. If the outcome is that it is unclear, full advice can then be requested, at a cost. This process is permitted by the FCA. There is a significant amount of information that SJP would need to consider, particularly if providing full advice. And a transfer could not be carried out until full advice was given. The FCA also required SJP to carry out calculations and analysis comparing the benefits of the proposed new scheme with those the existing DB scheme provided and compare the transfer value with the estimated cost of replacing the DB scheme benefits. All of which would take time.

Taking this into account, while it isn't in dispute that SJP did not begin its advice process as promptly as it should, there was no guarantee that even if it had, that this would've been concluded before the CETV Mrs W had obtained had expired. In which case, an updated CETV would always have been required.

Mrs W says she only obtained the CETV after her regular adviser from SJP asked her to do so. But a CETV would always have been required in order for SJP to carry out the analysis the regulator required of it in order to provide advice.

It may have been more appropriate for SJP to have waited until its advice process started, and a pension transfer adviser became involved, before requesting this. But, if it had done so, based on when the advice process started, the CETV wouldn't have been requested until early November 2022. Given an updated CETV was requested around 20 November 2022 – the one that was ultimately provided in January 2023 – it is entirely possible that, if SJP had waited and asked for a CETV when it began its advice process, the CETV would've been lower than in August 2022 and closer to that of the one given in January 2023. It's also worth noting that, while the CETV from August 2022 did expire, SJP met the cost of an updated one being provided.

So, although it might've been better if SJP had waited before requesting a CETV, and this has resulted in a loss of expectation for Mrs W as she obtained a higher CETV perhaps prematurely, again there is no guarantee she'd have ended up in a different position. She didn't incur the cost of having to obtain the replacement CETV. And as I've already said, the advice process may still have not been completed before the CETV expired, even if it had been requested later.

And on top of this there was also no guarantee that SJP's advice, which Mrs W would've been required to pay a significant fee for if taking full advice, would've been that a transfer was suitable. Again, the starting point set out by the FCA is that a transfer from a DB scheme is unsuitable unless it can be clearly demonstrated a transfer is in the consumer's best interests.

Mrs W has been clear that she wanted to transfer. But that doesn't mean that doing so was in her best interests. She also said she'd discussed this previously with SJP. But again, her regular adviser wasn't a DB transfer specialist.

Mrs W has said that she and her husband already had plans for their retirement, which another business had previously considered. But SJP was not bound by what a different business had advised, at a different point in time in relation to a separate DB scheme. Mrs W has also noted that she intended to access tax-free cash from this pension to use towards her mortgage. But taking tax-free cash was still possible under the DB scheme. And although she might not have considered it to be valuable a DB scheme provides a guaranteed escalating pension, payable for the rest of the pension holders life – however long that happens to be. It is not dependent on investment returns nor at risk of the pension

fund running out.

In the information SJP has provided to our service, the specialist adviser has said, given what Mrs W has said about the purpose of a transfer being to release tax-free cash to assist with her mortgage, they wouldn't have recommended a transfer for this reason. And they've said that they weren't aware of this objective at the time. But ultimately SJP didn't reach the point of providing either abridged or full advice about a transfer. I've seen evidence it had started to compile its abridged advice. But this is clearly incomplete – as advising against a transfer and there not being enough information to make a recommendation are both mentioned – and this wasn't given as the CETV expired. And the outcome of what the advice would've been is unknown. In the circumstances I have to make a decision on the balance of probabilities. And I can't reasonably say, based on the information that is available, that SJP would have recommended a transfer, even if it had provided advice sooner.

Mrs W is understandably upset that the CETV has been recalculated and reduced. But the CETV is not the same as a fund value of an investment linked pension. An investment linked pension's value rises and falls based on the investments held and their performance. The benefits in a DB scheme do not have an investment linked value though – as the underlying benefits are guaranteed. The CETV is a value determined by actuarial principles, taking into account factors including personal circumstances of the pension holder, contributions to the pension and market factors and requiring assumptions to be made about how future events might influence the members benefits. It is generally based on the providers best estimate of the expected cost of providing the guaranteed benefits. So, a fall in this is not a reduction in benefit value. And here Mrs W has retained the benefits under the DB scheme and still has access to them. So, while the CETV the trustees have offered her has fallen, she hasn't incurred a loss of pension benefits under the scheme.

Taking all of this into account, I can't fairly require SJP to process a transfer on Mrs W's behalf, as it did not complete the advice process. Nor, if the transfer value is still below the level quoted in August 2022, do I think it'd be fair to require SJP to make up that difference – as even if it had acted differently, there is no guarantee a transfer would've been completed for that amount.

SJP offered Mrs W £500 for the distress caused by its failure to start the advice process as promptly as it should've done. I don't doubt that this caused Mrs W distress. The correspondence I've seen makes it clear that she chased SJP to begin the process and I don't doubt it was frustrating when this didn't happen. In the circumstances though, while I know Mrs W doesn't agree, I think the offer that SJP has made is fair.

Mrs W is also unhappy that SJP did not respond to her complaint within eight weeks – the timescale set by the FCA. Again, our service is not the regulator. But, while I don't doubt SJP taking a longer period of time to respond was again likely to be frustrating, Mrs W was free to refer her complaint to the Financial Ombudsman when it failed to do so – something which she eventually did, prior to the complaint response being issued. So, while this was likely to have been upsetting, particularly as delays were the subject of the complaint, it hasn't prevented Mrs W from continuing with her complaint. And so, in the circumstances, I think the further £250 which SJP has offered for the upset the delays to its complaint handling has caused, is fair and reasonable.

As a result of the above, while I don't doubt this will come as a disappointment to Mrs W, because I think SJP has made a fair offer I won't be asking it to do anything more.

### **My final decision**

For the reasons I've explained I don't uphold this complaint, as I think St. James's Place

Wealth Management Plc has already made a fair offer to resolve things.

So, to put things right, if it hasn't already done so, St. James's Place Wealth Management Plc should pay Mrs W the £750 it previously offered.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 3 January 2024.

Ben Stoker  
**Ombudsman**