

## The complaint

Miss A complains the advice St. James's Place Wealth Management Plc ("SJP") gave her to invest in an ISA was unsuitable, the fees were high and not properly explained and it wasn't made clear she was receiving restricted advice. She has said she lost out because the advice persuaded her not to invest in a low-cost tracker fund ISA that performed better.

Miss A has been represented in her complaint by a relative. When referring below to things said by Miss A, I refer to things said by her or on her behalf by her representative.

## What happened

Miss A's complaint was considered by one of our investigators. In brief, our investigator concluded there was nothing impermissible about the charges made on the ISA and that the information SJP gave Miss A outlined these sufficiently and also adequately outlined that SJP's advice was restricted advice – meaning products it recommended would come from a limited number of providers rather than from across the whole market.

But our investigator concluded SJP's advice was unsuitable because SJP recommended Miss A invest in funds too heavily invested in shares. Our investigator thought half the ISA should have been invested instead so as to have less exposure to shares and half ought to have been invested so as to be free of investment risk and available for her to fall back on. Our investigator thought Miss A wanted capital growth but with only a small risk to capital.

In reaching that view our investigator noted Miss A was investing a sum gifted from relatives and, as a student with part-time work and supported by her parents, didn't have earnings to cover investment losses. Also our investigator thought there was merit in Miss A retaining short-term access to some of the funds, given her lack of income and other means.

Our investigator thought SJP should look at what Miss A got back when she cashed in her ISA and compare this with a "*fair value*" for the ISA on the same date - and if the fair value were more, pay the difference to her with interest to date. The fair value would be what the ISA would've been worth if it had produced a return in line with a suitable benchmark return. Our investigator referred the parties to guidance on our website about how to calculate this.

SJP responded to say it would be happy to carry out this calculation and make this offer if Miss A would accept it. But it said it would base this on a £16,000 "*net investment*". This was what was invested into funds held within the ISA from an initial sum of £16842 after taking off a 5% (£842) "*initial charge*". According to an "*investment certificate*" sent by SJP, £757 of this (4.5%) was for the advice and setting up the ISA investment (the other 0.5% was for ongoing advice and service for the year).

Miss A responded to say it still wasn't clear to her what charges she had paid. She said what SJP had given her wasn't adequate to explain these, or the restricted advice service, to an inexperienced investor like her. Miss A had cashed in the ISA investments and reinvested into a tracker fund and she said SJP was to blame for her cashing in the SJP investment.

Miss A thought SJP's investment advice was unsuitable for someone of her age looking for

an investment to help her onto the property ladder, given the heavy initial charges and the recommendation to leave it in place for five to fifteen years. She thought compensation should be based on comparison with a tracker fund because such an investment would have been in her best interests and was what she planned to invest in before SJP advised her.

Miss A also made and referred back to a number of other points she'd previously made and asked that all this be referred to and considered by an ombudsman.

Our investigator's view remained unchanged. As the complaint couldn't be resolved informally it 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.

Having done so, I've arrived at the same conclusion as our investigator and for similar reasons.

Neither party is suggesting that the ISA investments recommended by SJP were suitable for Miss A. SJP hasn't disagreed with the benchmark our investigator proposed. But Miss A says the comparison should be with a low-cost tracker fund instead.

Our investigator noted that more than half of each of the two funds SJP recommended was invested in shares, calculating the exposure overall to be a little over 60%. Looking at the benchmarks and investment remits used by the funds, the figure could go higher still.

SJP has told us the investment advice was initially requested with a view to beating a cash ISA return of 2.3% a year over a period of around five years. It was clear the funds might be used to fund a property purchase in future if circumstances allowed and that this was the main purpose of the investment. With those points in mind, I agree with the investigator that, due in particular to the relatively high exposure to shares, the degree of risk posed by the funds SJP recommended was unsuitably high for Miss A in her circumstances.

Those circumstances include her lack of previous investment experience and the relatively short investment period potentially of five years. Given that the timing of access would be driven by the timing of Miss A's property purchase rather than by investment conditions, and the likelihood of funds being withdrawn as a lump sum, there could also be limited flexibility to postpone access to the funds if markets were negative. Also a desire to beat cash returns requires exposure to risk assets but that was possible without having as much exposure as the funds SJP recommended to Miss A had.

In light of the above, my view is the benchmark proposed by our investigator represents a suitable asset mix for Miss A in her circumstances. I don't know whether the same could be said of the tracker fund Miss A has said she would've otherwise invested in. But I've not seen enough to make me think it more likely than not Miss A would've invested in that fund had it not been for SJP's unsuitable advice. I think using a benchmark to assess what loss, if any, Miss A has suffered, in accordance with our standard approach, is appropriate here.

Miss A hasn't said she shouldn't have invested but that she should've invested differently. I agree. SJP documented that although Miss A was a student with plans for some short-term vocational part-time work followed by further study, her living costs were met from other family resources. So she didn't have a short term need for the funds that would've made it wrong for her to invest them for the medium term.

Miss A thinks SJP fell short in the information it provided about the status of its advice and its charges. If SJP was also at fault in those regards, as well as giving unsuitable investment advice, the remedy would still be to compare the performance of the resulting unsuitable ISA investment with a suitable benchmark. So it wouldn't change the outcome. In view of this I will not discuss these points in detail here. Like our investigator, I think it likely SJP did give Miss A paperwork that included details of the charges and set out the status of its advice. Whether or how this was explained to her in SJP's phone call with her is not so clear.

Our investigator directed SJP to website guidance on calculating the proposed redress. This says that a business that fixes its error without charging a fee for doing so won't usually have to repay the advice fees. If we say advice fees should be returned, we'll ask that interest at 8% a year be added. Where the fee for unsuitable advice was paid by way of commission taken through charges, compensation for the investment loss should use the actual amount the consumer paid before charges without reducing the return to allow for commission – and in that situation no separate calculation is needed to return the fees.

Here SJP didn't fix the problem – Miss A chose to move from the unsuitable funds herself. Whether SJP brought that on, like she says, makes no difference here so I won't discuss it. The fees in this case, as I've outlined above, were paid by way of what was described as an initial charge deducted from the funds that were otherwise due to be invested. This wasn't commission technically but otherwise matches the situation of fees paid from charges - and charges deducted from the investment amount - rather than fees paid as separate costs. In any case our investigator didn't propose a separate method for refunding the fees.

In view of this, and as it is apparent the intention was to invest as much of the gifted funds as possible, the guidance flagged by our investigator indicates the benchmark fair value figure be arrived at using the sum Miss A had before the initial charge was deducted, rather than the net figure SJP has suggested. SJP hasn't told us of any reason why it ought to keep the fees Miss A paid it for advice that proved to be faulty. I reject such a view in any event. SJP hasn't suggested any other way for Miss A to recover the advice fees or given any reason why recovery through the benchmark wouldn't be appropriate, given that Miss A paid for a recommendation that was inappropriate and has since moved the funds and reinvested elsewhere, incurring whatever reinvestment fees resulted.

Our investigator didn't suggest that SJP pay Miss A anything for distress or inconvenience its error may have caused her. So I've considered this. I note her complaint was raised by her representative. I note that Miss A did decide to move her investment but other than that I can't see that she personally suffered much in the way of either inconvenience or distress as a result of SJP's error. So on balance I'm satisfied an award isn't due to her for this. I can't take account of or make an award for the inconvenience her representative has suffered.

Our investigator didn't suggest that any steps be taken to pay any redress due into Miss A's ISA or to compensate her for it not being paid there. Neither party has raised any objection to that or made any claims relating to this aspect specifically. In view of this and given the necessarily broad-brush approach taken to estimating the loss, and given also that I've seen no suggestion that Miss A is a higher rate taxpayer or someone with significant capital gains in excess of her annual allowances, I see no reason to make specific provision in my award to account for the fact that any redress due will be paid to Miss A outside of her ISA. She of course could pay the redress, if any, into her ISA if she has available allowance.

## **Putting things right**

### **Fair compensation**

In assessing what would be fair compensation, I consider that my aim should be to put

Miss A as close to the position she would probably now be in if she had not been given unsuitable advice.

I take the view that Miss A would have invested differently. It is not possible to say *precisely* what she would have done differently. But I am satisfied that what I have set out below is fair and reasonable given Miss A's circumstances and objectives when she invested.

### What must SJP do?

To compensate Miss A fairly, SJP must:

- Compare the performance of Miss A's investment with that of the benchmark shown below and pay the difference between the *fair value* and the *actual value* of the investments. If the *actual value* is greater than the *fair value*, no compensation is payable.
- SJP should also pay interest as set out below.

Income tax may be payable on any interest awarded.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
ISA investment	No longer in force	For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	Date of investment	Date ceased to be held	8% simple per year on any loss from the end date to the date of settlement

### **Actual value**

This means the actual amount paid from the investment at the end date.

### **Fair value**

This is what the investment would have been worth at the end date had it produced a return using the benchmark. The full investment amount should be used rather than the figure net of charges (so the £16842 figure rather than the £16,000 figure).

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, SJP should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

### **Why is this remedy suitable?**

I have decided on this method of compensation because:

- Miss A wanted Capital growth and only a small risk to her capital was suitable in her circumstances.
- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to her capital.
- The FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is a mix of diversified indices representing different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return.
- I consider that Miss A's risk profile was in between, in the sense that it was suitable for her to take a small level of risk, and she was willing to do so, to attain her investment objectives. So the 50/50 combination would reasonably put Miss A into that position. It does not mean Miss A would have invested 50% of her money in a fixed rate bond and 50% in some kind of index tracker fund. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Miss A could have obtained from investments suited to her objective and risk attitude.

SJP has previously asked us to clarify whether the above method means comparing 50% of the ISA with the Income index above and 50% with the fixed rate bonds benchmark – and I confirm that it does. Also the ‘date of investment’ above is the ISA start date as mentioned by SJP in its enquiry and the ‘date ceased to be held’ or ‘end date’ is the date described by SJP in its enquiry as the ISA encashment date, which was stated there to be 20 August 2020. The sum to be used to calculate the index and benchmark values is as I’ve explained further above and not the net investment sum SJP referred to in its enquiry.

### **My final decision**

For the reasons I’ve given above, I uphold Miss A’s complaint.

My decision is that St James's Place Wealth Management Plc should put things right by paying the amount calculated as set out above. St James's Place Wealth Management Plc should provide details of its calculation to Miss A in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I’m required to ask Miss A to accept or reject my decision before 5 December 2022.

Richard Sheridan  
**Ombudsman**