DRN-3739037

The complaint

Mr Y's complaint against St James's Place Wealth Management Plc ("SJP") is about their advice in 2016 that he should invest in several Enterprise Investment Schemes (EIS).

What happened

In March 2016, following the sale of his business and advice from SJP, Mr Y invested £136,125 across several different EIS. Later in 2016, Mr Y received a second payment in relation to the sale of his business and in December 2016 SJP advised him to invest a further £45,942 into EIS funds.

By June 2021, the value of Mr Y's EIS investments had greatly reduced, and he complained to SJP. Mr Y complained, in summary, that:

- SJP placed too much emphasis on the capital gains tax (CGT) benefits of the EIS investments and these didn't outweigh the potential losses he could suffer. He would have been better off paying CGT, investing his remaining capital elsewhere and achieving growth. The failure of his investments shows that the advice was unsuitable.

- He was advised to invest too high a proportion of his funds into EIS, much more than the 10% stated in the FCA handbook. In addition, 84% of his EIS funds were invested in two film related schemes. SJP should have recommended greater diversification across other sectors and more companies to spread the risk.

- He was looking for short term, low risk investments but after five years was unable to exit from the EIS. The suitability letter said the EIS investments were for a maximum period of three to four years, and he was assured they would allow him to exit when he needed to.

- He had retired as a financial adviser and had no substantive knowledge of EIS, having never invested in them before.

- The adviser (Mr B) told him that SJP guarantee the suitability of the advice given by their advisers and where they get it wrong, they put things right. He only invested because Mr B said that if the EIS failed SJP would put him back in the position he was in before investing.

- On both occasions Mr B conducted a fact find and then immediately recommended specific EIS investments that he had come prepared with. The suitability letters were not an accurate record of the conversations Mr Y and Mr B had and Mr Y didn't receive them until after the investments had been made. Mr Y feels he was pressured to invest.

- SJP didn't carry out sufficient due diligence on the EIS funds he invested in. That is supported by the fact that all of them have made a loss while other EIS schemes have made a profit. In addition, HMRC have subsequently sought to withdraw tax reliefs on one of his investments.

- SJP should have been monitoring the performance of his investments and updating him every six months as a minimum. He doesn't recall meeting Mr B after making the last of the investments in December 2016.

Mr Y wanted SJP to reimburse him for all the money he invested in the EIS, including any charges and tax losses. He also wanted them to reimburse him for legal fees of £10,000+vat that he said he would not have incurred had it not been for SJP's failings.

In response SJP said, in summary:

- The EIS investments were suitable for Mr Y. They met his objectives of deferring CGT liability following the sale of his business and claiming income tax relief. He involved his accountant to confirm the amounts reclaimable.

- Mr Y was made fully aware of the risks associated with EIS investments and agreed to them. He signed multiple documents to confirm he understood the investments and the risks involved.

- Mr Y wanted to focus on "limited life" EIS with structured exit strategies. Although other products were available and discussed with Mr Y, there was only a limited number of EIS that met that objective. When Mr Y made additional investments in December 2016, the suitability letter made clear that they further concentrated the risk of his investments, but he was happy to proceed.

- The recommended investments were aimed at allowing clients to exit at the earliest opportunity following the three year EIS qualifying period, but there was no guarantee of that timeframe. There is nothing to suggest Mr Y was told the timeframe was guaranteed.

- As a former financial adviser Mr Y was aware of how EIS worked and of the risks involved. All the relevant documents were provided to him at the time he made the investments. It is reasonable to think that if he had any concerns, he would have brought them to SJP's attention and not gone ahead with the investments. Mr Y also had a cooling off period after making the investments when he could have withdrawn if he had wanted to.

- As explained in the declaration Mr Y signed when he made the investments, SJP have no influence over the decisions taken by EIS providers and cannot therefore be held responsible for the performance of the EIS.

- The SJP guarantee that Mr Y has referred to provides assurance that where they have given unsuitable advice, they will put clients back in the position they should have been in. It doesn't compensate clients for the poor performance of investment products.

Our investigator didn't think SJP had done anything wrong. Mr Y disagreed and asked for an ombudsman to make a final decision.

My provisional decision

I gave my provisional decision in September 2022.

Both parties had provided detailed information in support of their case. I looked carefully at all the evidence but concentrated my findings on what I considered to be the key factors in reaching a fair and reasonable outcome.

I made clear at the outset that I was not looking at the management of the EIS funds themselves as that was not the responsibility of SJP. Neither was I looking at the advice SJP gave to Mr Y with the benefit of hindsight; the fact that Mr Y's investments had performed badly did not necessarily mean SJP had done something wrong. The key question I needed to consider was whether the advice that SJP gave to Mr Y was suitable at the time it was given.

The rules say that a business needs to get enough information from a customer to make sure a recommendation meets their objectives. So, before making their recommendations, SJP should have taken account of Mr Y's financial situation, his purpose in investing and attitude to risk, and how long he wanted to invest for.

Mr Y decided to retire in 2015 and sold his business for an initial payment of about £770,000. Later in 2015 and early 2016 there were some emails between Mr Y and Mr B discussing possible investments for Mr Y, including EIS. According to an email in February 2016, Mr Y estimated that he had a CGT liability of about £65,000, following the sale of his business, that he was looking to mitigate.

From SJP's records it appeared thar Mr B met Mr Y on 19 February 2016 for a general review; that was the first meeting with Mr B as Mr Y's adviser. There was no detailed record of that meeting, but Mr B's summary described it as:

> "an in depth discussion relating to all areas of his finances, focusing on pensions and EIS due to the large CGT liability he has…"

Mr Y and Mr B met again on 4 March 2016 and at that meeting Mr B recommended that Mr Y invest in several EIS. They completed the necessary application forms which Mr B submitted on Mr Y's behalf.

The main written record of that meeting was the suitability letter from Mr B, which was sent on 8 March – four days after the meeting had taken place and the EIS applications had been submitted. I noted that Mr Y did not think the letter was an accurate record of the meeting, but I thought it was reasonable to take account of it in making my findings. I also took account of the brief notes that it appeared Mr B made at the time for SJP's records.

In March 2016 Mr Y was in his early 60s and married with two children. He had cash deposits of £225,000 left from the sale of his business the previous year. He had £40,000 invested in premium bonds and £34,927 in a venture capital trust (VCT). The suitability letter said that Mr Y also had £285,000 invested in an ISA, but Mr Y had said those funds should have been described as part of his pension.

Objectives

The suitability letter said Mr Y's objectives were to gain CGT and income tax relief by investing in an EIS and to invest in a speculative investment that offered the opportunity for growth.

Based on that, and the earlier emails between Mr Y and Mr B, I was satisfied that Mr Y was looking to invest his capital in a tax efficient way and was interested in exploring the potential of EIS and VCT investments to achieve that.

Timeframes for investment

The suitability letter said Mr Y wanted to invest over a period of three years plus. Mr B recommended that Mr Y invest in “Limited Life EIS” which were designed to end shortly after the initial investment period of three years. He suggested that Mr Y was likely to be able to access his funds “in year 4(ish) depending on the underlying investment companies”. According to the suitability letter, Mr B also explained that the funds would be invested in unlisted companies and the sale of the investment may be delayed.

I noted that at the meeting on 4 March 2016 Mr B provided Mr Y with copies of the information memorandums (IMs) and fund factsheets for the EIS he had recommended. These documents explained that the timetable for exit could not be guaranteed.

In his complaint, Mr Y said he had not been able to exit from his investments when he wanted to even though six years had now passed. He said Mr B assured him the EIS investments were for a maximum period of three to four years, and he would be able to exit when he needed to.

I thought about what Mr Y had said. But I thought it was made sufficiently clear to him that the timeframe for withdrawing funds could not be guaranteed with an EIS investment. And overall, I thought the investments were in line with Mr Y’s aim of investing for three years plus.

Attitude to risk

The suitability letter said that Mr B and Mr Y discussed Mr Y’s attitude to risk in conjunction with the SJP brochure about investment risk and the different risk ratings. The letter recorded the following about Mr Y’s attitude to risk:

> “You confirmed you are a High Risk investor on our risk spectrum for this investment. You are looking for the potential to achieve exceptional returns but you accept that this will be at a high risk to capital. You have considerable experience of making investments and are able to invest for the long term. You are comfortable with a portfolio that may be highly concentrated and contain high risk and specialist investments, and accept that there may be sharp falls in the value of your investments.
>
> Although your stated attitude to risk for this investment is high, this would appear to differ from your previous ATR of medium based on your investment experience. We discussed this in detail and you have confirmed the reason for the change in ATR is because of this speculative investment into the EIS arena for the purpose of both claiming back tax, tax deferral and having a speculative 'punt' with your money.”

I noted that Mr Y had disputed whether that was an accurate record of the discussion as he had said he was looking for a lower risk investment. However, Mr Y and Mr B had previously discussed EIS investments by email and in the earlier meeting on 19 February 2016. Although Mr Y had said he did not have substantive knowledge of EIS, as a retired financial adviser, I thought he would have been aware that an EIS was a high risk investment. From what I’d seen, I thought Mr Y was prepared to take a high level of risk for this investment.

At the meeting, Mr Y also signed a copy of SJP’s EIS client declaration. In so doing, he confirmed that he understood an EIS was a high risk investment and that he could get back less than he originally invested. Mr Y was also given copies of the IMs and other documents relating to the EIS he was advised to invest in, and I thought those documents made clear the level of risk involved.

Overall, I was satisfied that the EIS investments matched Mr Y's attitude to risk.

Capacity for risk and affordability

As well as Mr Y's attitude to risk, SJP were also responsible for assessing his capacity to take a high level of risk and whether that was affordable for him.

Mr Y had retired the previous year and sold his business. I'd not seen evidence from the suitability letter or elsewhere that Mr B obtained information from Mr Y about what sources of income he had and his monthly expenditure. In his submissions to our service, Mr Y had said he had no regular income and was not drawing a pension.

In the suitability letter Mr B recorded that following the EIS investments Mr Y would still have £128,875 in accessible cash accounts, including his premium bonds, to meet day to day cash needs and provide any emergency funds. He also said that a fall in the value of the investments would not have a significant impact on Mr Y's standard of living because he wasn't relying on it for income and had other assets available. And that the impact on Mr Y's disposable income would be neutral as he wasn't requiring an income from the investment.

Mr B's advice was that Mr Y should put £136,125 into high risk investments which put all his capital at risk. I accepted that Mr Y was still left with substantial cash reserves and that he wasn't requiring an income from the investments. But, from what I'd seen, I didn't think I had enough evidence to say that Mr Y had the capacity to recoup any losses that might arise.

I'd also taken account of how Mr Y's overall assets would be invested. In the suitability letter Mr B said the EIS investments would make up approximately 23.27% of Mr Y's assets. In addition, Mr Y already had £34,927 invested in a VCT and these are generally considered to be high risk investments as well. So, based on the figures Mr B used, Mr Y would have had 29.24% of his assets in high risk investments.

However, Mr Y had also said that Mr B made a mistake when he listed his assets and that the £285,000 labelled as an ISA was a pension fund. He said those funds should have been excluded from the list and in that case the high risk EIS and VCT investments would have been shown to make up 57% of his assets.

Even based on the list of assets in Mr B's suitability letter, Mr Y would have had close to a third of his investments in high risk assets. And in the absence of any further evidence, I was minded to accept what Mr Y had said about his pension fund, which would mean over 50% of his investable assets being put at high risk.

I'd not seen evidence Mr Y had the capacity to recoup any losses he might face, so I thought he was advised to expose too much of his money to a high level of risk. And based on the suitability letter, I was not persuaded that was brought sufficiently to his attention.

I made that finding even allowing for the tax benefits that the EIS investments offered to Mr Y. I accepted that Mr Y was looking for an investment that would offer tax relief on the proceeds from the sale of his business. But it was the responsibility of SJP to weigh up Mr Y's objectives, capacity for risk and the other factors I'd discussed before making a recommendation to him. And based on the evidence I'd seen – the emails between Mr Y and Mr B and the notes of their meetings - I didn't think they had done this before advising Mr Y to invest in the EIS.

It seemed that Mr Y had suggested the possibility of investing in EIS in an email to Mr B in 2015. I'd also seen a copy of an email from Mr B to Mr Y dated 18 February 2016.

That email was headed “EIS advice – why should you use them now?” and explained that Mr Y had a limited time period in which to invest in EIS and that it was “…one of your last great opportunities to secure a large level tax relief…”

As I’d noted earlier in my provisional decision, it appeared that Mr B and Mr Y then met on 19 February 2016. According to Mr B’s summary, that meeting was a general review of Mr Y’s finances with a focus on pensions and EIS. That was followed by their meeting on 4 March 2016 where Mr Y’s EIS application forms were completed. Although I had taken account of the record of the meeting provided by the suitability letter, I noted also that Mr B’s own summary of that meeting said “At this meeting we focused purely on EIS provision…”

So, I thought there was some evidence that Mr B had in effect already recommended the EIS investments to Mr Y even before their meetings on 19 February and 4 March 2016. And although there was some discussion of Mr Y’s circumstances and capacity for risk at those meetings, I was not persuaded he was made fully aware of the extent of the risk he was taking when balanced against the tax benefits. And I thought the adviser should have given greater weight to the fact that a substantial proportion of Mr Y’s assets were being exposed to the risk of capital losses that he’d be unable to replace.

In coming to my provisional decision, I’d also taken account of Mr Y’s background as a retired financial adviser. He had investment experience of his own and substantial knowledge of investment products from his time as an advisor. So, based on Mr Y’s knowledge and experience alone an EIS was potentially a suitable investment for him. But SJP were responsible for taking account of more than just Mr Y’s investment experience in giving him suitable advice. Ultimately it was for SJP to recommend an investment that was suitable for Mr Y’s needs and, for the reasons I’d discussed, I didn’t think the EIS investments were suitable.

December 2016 advice

As well as the advice he was given in March 2016, Mr Y had also complained about SJP’s advice that he invest a further £45,942 into EIS funds in December 2016. That followed Mr Y’s receipt of a second payment of about £169,000 from the sale of his business.

I thought SJP’s advice in December 2016 was unsuitable for much the same reasons as the advice Mr Y was given in March 2016. The suitability letter dated 9 December 2016 said the recommended investments represented 9.93% of Mr Y’s investable wealth which was “within the allowable range”. But I’d not seen evidence that SJP made any assessment of the proportion of Mr Y’s assets that would now be invested in high risk assets.

Based on the investments listed in the suitability letter of 9 December 2016, it appeared that SJP’s advice meant that about 45% of Mr Y’s assets would be placed in high risk EIS or VCT investments. And, if I were to accept what Mr Y had said about his pension funds being wrongly categorised, then that percentage could have been at least 70%. In either case, I thought SJP were again recommending that Mr Y invest too high a proportion of his assets in high risk investments without the capacity to recoup any losses he might face. I didn’t think that was made sufficiently clear to Mr Y and I didn’t think SJP’s advice was suitable to Mr Y’s needs.

Summary of provisional decision

Overall, I was not persuaded that the advice Mr Y was given in March and December 2016 was suitable. Even allowing for the tax benefits the investments offered, I didn’t think Mr Y was made aware of the extent of his overall exposure to risk, without the capacity to replace any capital losses.

I said that when I thought a business had given unsuitable advice, I also had to decide what I thought would have happened if nothing had gone wrong. In this case I had thought about whether, even if he'd been given suitable advice, Mr Y would still have gone ahead and invested in the EIS. As I'd noted previously, his aim was to obtain tax relief, he was prepared to take a high level of risk and he had himself suggested the possibility of investing in EIS.

But if Mr Y had understood the extent of his overall exposure to risk, I thought he would have concluded that the EIS investments would expose him to more risk than he wanted to take. If Mr Y had been given suitable advice, I thought he would most likely have invested differently. I said that I was therefore planning to uphold Mr Y's complaint and tell SJP to put things right.

In assessing what would be fair compensation, I said my aim should be to put Mr Y as close to the position he would probably now be in if he had not been given unsuitable advice. I thought Mr Y would have invested differently. It was not possible to say precisely what he would have done, but I chose a method of compensation that I was satisfied was fair and reasonable given Mr Y's circumstances and objectives when he invested. I did not think it was fair and reasonable for me to ask SJP to pay the legal fees Mr Y had incurred in making his complaint.

I explained that, where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £160,000, plus any interest and/or costs that I consider appropriate. My provisional decision was that SJP should pay the amount produced by the method of compensation I had set out up to the maximum of £160,000 plus any interest. I said that if the amount produced by the calculation of fair compensation exceeded £160,000, I recommended that SJP pay Mr Y the balance plus any interest on that amount.

Responses to my provisional decision

Mr Y accepted my provisional decision.

SJP disagreed with my provisional decision and said, in summary, that:

- Mr Y was due to receive an occupational defined benefit pension scheme from June 2017, which would provide an income of £12,000 per annum. That would represent 60% of Mr Y's annual income requirements.

- Mr Y also had personal pensions totalling £968,345, as shown on a fact find document which they say Mr Y and his wife completed with Mr B in December 2016. As he was over 55, the funds were fully accessible to him and showed he had sufficient capacity for loss in relation to the EIS investments.

- SJP do not agree that readily available investments intended to provide an income in retirement should be excluded from considerations about investable wealth and capacity for loss. Leaving aside the ISA funds that Mr Y has said were incorrectly described, and taking account of his pensions, Mr Y invested just 14.7% of his investable wealth in EIS across the two advice points.

- Mr Y had almost £1 million available in personal pensions and was about to start receiving benefit from a defined benefit pension scheme.

- SJP cannot explain why Mr Y's pensions were not set out clearly in the suitability letters. But both Mr Y and Mr B were aware of them and how Mr Y could access the benefits.

The fact find document completed in December 2016 showed the value of Mr Y's pensions, which would have been in place in March 2016. And the December 2016 suitability letter made brief reference to Mr Y's investment experience in "various pension plans".

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.

That includes all the submissions made by both parties during the time this complaint has been with our service.

SJP have provided a copy of a fact find document listing Mr Y's pension plans. Although the document does not appear to be dated, the valuation date for the pensions is given as 8 December 2016. So, I think it's likely the fact find was completed in December 2016 when Mr Y was advised to make a second investment in EIS funds.

SJP have said that because Mr Y's pension plans were fully accessible to him, he had sufficient capacity to absorb any losses that might arise from his EIS investments. I've thought carefully about what SJP have said and in coming to my decision I've taken account of all information available about Mr Y's financial situation at the time - including his income, savings, investments, and pensions.

I noted in my provisional decision that Mr Y was in his early 60s at the time of SJP's initial advice and he had retired the previous year. I'd not seen evidence that before making his recommendations in March 2016, Mr B had obtained information about Mr Y's income and monthly expenditure. Mr Y had said he had no regular income and was not drawing a pension.

The December 2016 fact find, which SJP have now provided, says that Mr Y was due to start receiving income from a pension of £12,000 a year. It put his net monthly income from pension and property at £1,624 and his total monthly expenditure at £1,000. That would have left Mr Y at that time with a monthly disposable income of £624.

In March 2016, Mr Y had cash deposits of £225,000 left from the sale of his business the previous year. He had £40,000 invested in premium bonds and £34,927 in a venture capital trust (VCT).

In my provisional decision I said I thought that over 50% of Mr Y's investable assets were put at high risk when he invested £136,125 in EIS in March 2016. And that rose to a least 70% with the further EIS investments he made in December 2016. The percentages were higher than those calculated by Mr B at the time because they took account of Mr Y's existing VCT investment and because I accepted Mr Y's statement that £285,000 of his pension funds had been incorrectly labelled as an ISA.

It seems from the December 2016 fact find that Mr Y had pension plans valued at almost £1 million. Although I've not seen evidence of a fact find being completed before Mr Y made his initial EIS investments in March 2016, I think it's likely that his pensions would have had a broadly similar value at that time. As I noted in my provisional decision, it appears that Mr B and Mr Y had discussed pensions when they met on 19 February 2016. So, I think Mr B would have had some understanding of Mr Y's pension arrangements at the time of the initial advice in March 2016.

SJP have said that Mr Y's pensions were part of his investable wealth and so the percentage of his assets being placed at high risk was much lower. They say the pension funds were readily available, which meant Mr Y had the capacity to absorb any losses.

I agree that information about Mr Y's pension funds was relevant to his overall financial situation and the suitability of any advice from SJP. But in assessing his capacity for loss, I think it is reasonable to make a distinction between his readily investible funds and the value of his pension plans. Although Mr Y might have been able to access his pension funds, I think he would have looked to them to provide security and an income during his retirement. I've not seen any evidence that Mr Y was prepared to use those funds to replace any losses he might suffer on his investments.

I note that the fact find document Mr B completed in December 2016 listed Mr Y's pensions separately from his other assets. And Mr B did not include Mr Y's pension funds in his own calculations of the percentage of investible wealth in either the March 2016 or December 2016 suitability letters, with the exception of the fund mistakenly described as an ISA.

Across the two advice points, Mr B advised Mr Y to put over £180,000 of his funds into high risk investments which put all his capital at risk. The key point I need to decide is whether, in view of his overall financial situation, Mr Y had the capacity to take a high level of risk with those funds and whether that was affordable for him.

Taking account of all the information I have seen about Mr Y's financial situation at the time - and noting that he had significant cash reserves, and pensions to fund his retirement - I don't think I can fairly say he had the capacity to recoup any losses that might arise from the EIS investments. I think he was advised to expose too much of his money to a high level of risk and, based on the suitability letters, I'm not persuaded that was brought sufficiently to his attention. I don't think Mr Y was made aware of the extent of his overall exposure to risk and that he might in effect be reliant on his pension funds to replace any capital losses.

As I said at the time of my provisional findings, I have come to this decision even allowing for the tax benefits that the EIS investments offered to Mr Y. I'm not persuaded he was made fully aware of the extent of the risk he was taking when balanced against the tax benefits. And I think the adviser should have given greater weight to the fact that a substantial proportion of Mr Y's assets were being exposed to the risk of capital losses that he'd be unable to replace.

Overall, I'm not persuaded that the advice Mr Y was given in March and December 2016 was suitable. If Mr Y been given suitable advice and understood the extent of his overall exposure to risk, I think he would most likely have invested differently.

Putting things right

In assessing what would be fair compensation, I consider that my aim should be to put Mr Y as close to the position he would probably now be in if he had not been given unsuitable advice.

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

What must SJP do?

To compensate Mr Y fairly, SJP must:

- Compare the performance of each of Mr Y's investments with that of the benchmark shown below.

- A separate calculation should be carried out for each investment. The resultant figures should then be added up. If the calculation still shows a loss, that would be the amount payable to Mr Y.

- SJP should also pay interest as set out below.

Income tax may be payable on any interest awarded.

Investment name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
5 EIS investments in March/April 2016	Still exists but illiquid	FTSE UK Private Investors Income Total Return Index	Date of investment	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance)
3 EIS investments in December 2016	Still exists but illiquid	FTSE UK Private Investors Income Total Return Index	Date of investment	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance)

For each investment:

Actual value

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

If at the end date the investment is illiquid (meaning it could not be readily sold on the open market), it may be difficult to work out what the *actual value* is. In such a case the *actual value* should be assumed to be zero. This is provided Mr Y agrees to SJP taking ownership of the investment, if it wishes to. If it is not possible for SJP to take ownership, then it may request an undertaking from Mr Y that he repays to SJP any amount he may receive from the investment in future.

SJP may also add to the actual value any available tax reliefs Mr Y has received by virtue of making the investment. It may ask him for evidence of this or assume he has availed himself of all available relief at his marginal rate of tax. For ease it can calculate the value of the available relief and add it to the actual value as one figure at the end.

Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

Any withdrawal, income or other distributions paid out of the investments should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if SJP totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically. If any distributions or income were automatically paid out into a portfolio and left uninvested, they must be deducted at the end to determine the fair value, and not periodically.

Why is this remedy suitable?

I have decided on this method of compensation because:

- Mr Y wanted capital growth and was willing to accept some investment risk.
- 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.
- Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mr Y's circumstances and risk attitude.

As I explained in my provisional decision, I do not think it is fair and reasonable for me to ask SJP to pay the legal fees Mr Y has incurred in making his complaint.

My final decision

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £160,000, plus any interest and/or costs that I consider appropriate. If I consider that fair compensation exceeds £160,000, I may recommend the business to pay the balance.

St James's Place Wealth Management Plc should provide details of its calculation to Mr Y in a clear, simple format.

Recommendation: If the amount produced by the calculation of fair compensation exceeds £160,000, I recommend that St James's Place Wealth Management Plc pay Mr Y the balance plus any interest on that amount as set out above.

This recommendation is not part of my determination or award. It does not bind St James's Place Wealth Management Plc. It is unlikely that Mr Y can accept my decision and go to court to ask for the balance. Mr Y may want to consider getting independent legal advice before deciding whether to accept this decision.

Determination and award: I uphold the complaint. I consider that fair compensation should be calculated as set out above. My decision is that St James's Place Wealth

Management Plc should pay Mr Y the amount produced by that calculation – up to a maximum of £160,000 plus any interest set out above.

If St James's Place Wealth Management Plc do not pay the full fair compensation, then any investment currently illiquid should be retained by Mr Y. This is until any future benefit that he may receive from the investment together with the compensation paid by St James's Place Wealth Management Plc (excluding any interest) equates to the full fair compensation as set out above.

St James's Place Wealth Management Plc may request an undertaking from Mr Y that either he repays to St James's Place Wealth Management Plc any amount Mr Y may receive from the investment thereafter or if possible, transfers the investment at that point.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Y to accept or reject my decision before 19 December 2022.

Matthew Young
Ombudsman