

## The complaint

Mr T is unhappy with various aspects of the service he has been provided by St. James's Place Wealth Management Plc (SJP) over a number of years. In particular he is unhappy with the charges applied to his plan, the performance of his plan and he alleges key information was not shared with him. Mr T complained jointly with Mrs T but subsequently the complaint was split and so Mrs T's complaint whilst similar in nature is being considered by me under a separate case reference.

## What happened

Before the issues that have been complained about, Mr T & Mrs T and other members of their family had been customers of SJP for a number of years. Mr T had made a number of contributions to his pension in this time and when this business was conducted it was recorded that the charges applied before fund charges was 1.25% per year.

In 2013 Mr T was advised to take tax-free cash from his plan and enter capped drawdown. It was recorded that his annual management charge would now be 1.5% and the various fund charges were also set out. The suitability report was addressed to Mr T's address. Following this meeting the adviser sent a letter to Mr T saying:

*'Could you and Mrs T please sign the attached Client Declaration forms and return them to me in the enclosed envelope? I forgot to ask you to sign them when we met last week. Thank you.'*

The declaration said.

*'I hereby confirm that the contents of this letter and report have been explained to me and that I have fully considered all the relevant information to enable me to make an informed decision on the recommendation set out above.'*

*In particular I understand the impact on my income in retirement of drawing my tax-free cash now and that Income Drawdown can offer no guarantees and both income and capital may be lower in future than illustrated in this report and when compared to alternatives.'*

The declarations were sent back and Mrs T had signed the declaration dated 25 June 2013 alongside this there was also a copy of the declaration with Mr T's name included at the bottom with the same date but this was unsigned. However, SJP's records show a copy was signed later on 30 September.

In 2019 a summary of charges was issued to Mr T. This showed that Mr T's charges were between 1.87% to 2.04% but this did not include transaction costs. Within this report it also sets out the charges applied to other members of the family and Mrs T's charges are shown to be at 1.29% to 1.39% on the same basis and the other family members are showing to have charges at around 1.7%.

This appears to be the beginning of Mr T & Mrs T's unhappiness with SJP. Meeting notes from later in 2019 show that Mr & Mrs T were considering transferring their agency to

another firm and SJP were looking into if they could reduce their fees for the family to the level Mrs T was being charged. It said Mr T had stated if SJP could make a profit at 1.3% on Mrs T's portfolio it should offer the same for the rest of the family.

Following this SJP contacted Mr T to explain that Mrs T's charges had in fact not been around 1.3% as previously stated but the standard charge of 1.25% plus investment charges. It apologised for this error and the confusion this had caused.

It also confirmed it would give the family a special offer with the standard charge being reduced to 1.05% for existing funds and 0.8% for all new investments. It explained both would still be subject to the specific investment charges.

Following this in September 2020, a complaint containing a substantial amount of points relating to both Mr and Mrs T was made to SJP. The key points being:

- The performance was poor and below benchmarks. The information given made it difficult to understand this performance and understand which funds needed to be switched.
- Mr T's daughters' fund had performed better and he believed this may be due to the switch he made to drawdown.
- His charges were excessive and had increased since going into drawdown by around 0.44%. This should be refunded to him.
- Too much of his funds were held in cash as this receives no return.
- His funds aren't invested correctly and corrective actions ought to have been taken.
- SJP were backdating charges without his consent.
- His property fund holding was frozen, and he has not been updated on the progress of the fund.

SJP responded a number of times to the various complaint points as the complaints process progressed. I've summarised their responses below:

- It had apologised for the mistake regarding Mrs T's charging structure and agreed to reduce charges across the family.
- It showed that differences in fund allocations had led to the different investment returns.
- It said Mr T's portfolio had outperformed the relevant Balanced Asset Index over the course of the year, and slightly underperformed over the course of 5 years but outperformed this index over a 10-year period.
- Mr T's funds had remained within his attitude to risk, were affordable and matched his objectives.
- SJP stated they had found no evidence that supported claims he hadn't received the appropriate documents.
- They also provided a detailed commentary as to the differences in the performance of the family's portfolios, noting that some other members of the family had at times been exposed to higher risk funds that wouldn't be suitable for Mr T, and that his funds were heavily UK Equity based, whereas other family members had more of a US Equity weighting, which had outperformed the UK considerably.
- They concluded their response by offering as a gesture of goodwill, a sum of £2,000.

Mr T remained unhappy with this response and referred a complaint to our service for issues relating to him and Mrs T. As the complaint related to different products and separate advice events, the complaint was split.

Our investigator looked into matters but didn't think that the complaint should be upheld.

He explained that the complaint could be categorised as having three main issues: charges, lack of provision of the relevant information and poor performance.

The investigator concluded that the charges had been made in line with what had been agreed. In relation to the suitability reports, the investigator said the evidence supported that these had been sent. Evidence showed Mr T had signed to agree he'd read the reports. Finally he explained that poor performance in itself doesn't mean that a complaint should be upheld, markets fluctuate and he felt the investments made were in line with Mr T's attitude to risk.

He said that whilst SJP had made some mistakes such as the erroneous charges listed in relation to Mrs T, it had given the family reduced charges and that was sufficient action to address this error. He also noted the £2,000 offer was significantly higher than what we would award if the aforementioned steps hadn't been taken. He concluded that SJP had not acted in a misleading manner regarding charges or disclosing information and were not responsible for any perceived underperformance of funds.

Mr T responded to say he disagreed that it was reasonable to assume he'd received the suitability reports based on his signature to say so. He said he'd been naïve in signing the declarations without sight of the suitability report. His family kept all their documents relating to advice but none had the suitability reports in their possession. Rather than sending the slip to sign, good practice would've been to send all the information alongside the declaration. And whilst the investigator said Mr T had signed the document on 25 June, his copy showed that this was signed on 31 September. With this much time between the advice and his signature surely SJP ought to have sent all the documentation and not just the declaration.

Mr T also disputed that he was told about the increase in charges when moving into drawdown. Mr T said it would've taken a lot of time to go through this and he'd have remembered the meeting if it had occurred.

He said the reduction in fees was to keep the family as clients and not as compensation as the investigator implied.

In relation to the performance of his fund Mr T said the investigator hadn't commented on differences in information given by SJP in terms of performance. He alleged the complaints team had calculated the returns on a more favourable basis to placate him. He again said the fees had been increased without his knowledge when he went into drawdown and this had affected performance.

Mr T also said the funds he'd actually invested in, didn't correlate with those in the suitability report so he was invested in the wrong funds. He was also unhappy that a large proportion of his fund was invested in property which was frozen.

He said the investigator had not addressed the points about poor service in the extended time it took to answer the complaint and provide proper answers.

He argued that the investigator had implied that SJP offered him £2,000 to compensate for the incorrect disclosure of his wife's charges. This is incorrect as SJP offered this to him for the stress and extended time it took for them to reply to his complaint.

Our investigator responded to say:

The evidence he has seen is that documents were addressed to Mr T and he signed to confirm he understood them. It is not unusual for an adviser to prepare a recommendation

prior to a meeting in which the recommendation would be discussed. His conclusion was based on the evidence presented.

Regarding the charges, he considered that all charges were disclosed and charged appropriately.

The disparity in the funds comes from different recommendations across the various reports issued. In some instances, the first set of funds were recommended, and in others the second set. Neither were outside Mr T's risk tolerances and therefore cannot be relied upon as an error linked to Mr T's belief the portfolio performed poorly.

The investigator didn't view SJP's use of different growth graphs being malicious, and it is reasonable that different teams assessing growth at different stages will use slightly different dates.

Mr T still disagreed and so the case has been passed to me, an ombudsman at this service, to consider.

### **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.

Mr T has made numerous points and submissions to this service and his complaint spans a number of years and interactions with SJP. However, my decision will concentrate on what I consider the crux of the complaint. This is not meant as a dis-service to Mr T, I have read and considered all the evidence provided by both parties but it is not necessary for me to comment on everything raised. We are an informal dispute resolution service and my role is to get to the heart of the matter. My decision reflects this and whilst I've attempted to cover what I consider are the key matters for Mr T, it's ultimately up to me to decide what is relevant in deciding this complaint. As this complaint is very similar in nature to Mrs T's complaint which I am issuing under a separate reference, much of the findings in this decision will be the same for Mrs T's case. But for completeness I've set the same findings out in both decisions.

Having considered all the evidence and arguments, I agree broadly with the findings of the investigator. I will not repeat all those findings here, but I will explain the key reasons behind my decision.

#### ***Was the relevant information disclosed to Mr T?***

Mr T says he didn't receive the suitability reports and key documents throughout much of his time with SJP and in particular the move into drawdown in 2013 which meant his charges increased. But as the investigator set out the evidence supports that Mr T did receive this information. He signed to say that he did in 2013. The evidence shows a letter was addressed including the suitability report to Mr T. And that following this the adviser had also written to Mr and Mrs T as he'd forgotten to get them to sign the forms to declare they'd understood the advice. (Mrs T also received advice around the same time). The forms enclosed said:

*'I hereby confirm that the contents of this letter and report have been explained to me and that I have fully considered all the relevant information to enable me to make an informed decision on the recommendation set out above.'*

*In particular I understand the impact on my income in retirement of drawing my tax-free cash now and that Income Drawdown can offer no guarantees and both income and capital may be lower in future than illustrated in this report and when compared to alternatives.'*

Mr T said he was naïve to sign it without seeing the suitability report and other documents. But if Mr T didn't have a copy of the report or hadn't seen it, I think he ought to have requested it then. There is an obligation on individuals to mitigate any known errors, so had Mr T felt he hadn't fully understood the drawdown arrangement or SJP had withheld information from him, it was for him to let SJP know then.

Furthermore, the evidence shows that across the years and advice, SJP included covering letters with its suitability reports and these were correctly addressed. Whilst I don't have proof they were received, on the balance of probabilities I think it's likely they were.

I think it is reasonable for SJP to have believed that Mr T was happy with the arrangements discussed once Mr T signed to agree to them. And as I've said if Mr T didn't feel he fully understood matters or key information hadn't been divulged he ought to have raised that then.

I've thought about what Mr T has said and what he thinks SJP ought to have done when it sent him the declaration, but ultimately the evidence doesn't support that SJP withheld or failed to disclose key information to Mr T.

*Has SJP made a mistake in the charges it has applied to Mr T's portfolio?*

Mr T believes he has been overcharged by SJP, he alleges he was not told about the change in charges when he moved into drawdown and he has been charged more than other family members.

As part of the complaint correspondence with Mr T's family SJP set out the charges applicable to each family member. As explained above within this it erroneously set out Mrs T's charges as being quite a bit lower than they actually were and lower than other members of the family. Mr T's charges were the highest at around 2.0% per annum whereas the other family members were around 1.7%. The charges fluctuated but remained roughly within 0.5% difference across the years.

Before going into drawdown in 2013, Mr T's charges were 1.87% which is a little higher than the rest of the family but not substantially so. In that year Mr T met with the adviser and it was recommended he take tax-free cash and enter capped drawdown. The suitability report said this was to allow Mr T to gift sums to his daughters to help them purchase a property. The report set out Mr T's charges would increase due to being in drawdown and the effect this would have on growth. As set out above in the background to this complaint, Mr T signed to agree that he'd received this information.

So the evidence suggests Mr T ought to have been aware of the increase in his charges and as family members weren't in the same product as him, that his charges would be higher than theirs.

So I don't agree that the additional charges from the drawdown should be refunded to Mr T. They have been charged inline with the agreement set out and agreed to by Mr T.

Looking at the circumstances and the history to this complaint, I think what has caused the distrust in terms of the charges applied is the mistake SJP made in 2019. When setting out each family members charges, Mrs T's charges were shown to be significantly less by comparison. But SJP has explained this mistake was an error in its calculation of the

charges for this report, and actually her plan was setup on the same charging structure as the rest of the family. And SJP corrected this mistake and then set out the charges Mrs T had actually paid which were broadly in line with the other members of the family.

The result of this seems to be that Mr T saw the lower charges erroneously set out as representative of what he and the rest of the family should be charged. Subsequently SJP agreed to reduce the charges for all the family. Whilst it had made an administrative error in relation to Mrs T's documented charges, I think this goes beyond anything I would expect a business to offer for what was just a clerical error that had no financial effect. I understand Mr T has said this offer was made to keep it as customers and not as compensation but regardless I don't think SJP is required to do anything more to put this error right for Mr and Mrs T.

In conclusion, I think Mr T was charged fairly and in line with what was agreed and the costs of the various funds and products. Mr T's portfolio had higher charges than other family members, but this is explained by his move to drawdown in 2013.

### *Investment performance*

Mr T holds SJP responsible for what he believes constitutes poor performance of his portfolio and he's compared this to other family members who've had better performance. He believes this is due to the excessive charging (already considered above) and has raised concerns about the selection of his funds including too much being held in cash and a property fund which was frozen.

Poor fund performance on its own is not a reason to uphold a complaint, Mr T was aware that his fund performance wasn't guaranteed and could fluctuate. That his funds performed differently to other family members is not a surprise nor a reason to uphold the complaint. This is explained by the fact that at times they were invested in different funds and so the performance will differ. Poor performance would be considered potentially as a reason to uphold a complaint if this was due to the unsuitability of the investments for a customer. But I don't think this reason is present here.

Mr T was recorded as having a medium attitude to risk. I've looked to see if the overall risk exposure of the portfolio was in-line with a medium risk investor and I think Mr T's portfolio was invested in a way that was broadly suitable for him. So I don't agree that SJP should compensate Mr T for his belief that his fund has seen poor returns.

Mr T has raised concerns with his investment in the property fund which was frozen and would require an exit penalty to leave. But as I've said I think the portfolio was suitably balanced and a common issue with investing in property are liquidity issues. The fund in question was suspended due to a high level of withdrawals that couldn't be supported without selling assets from within the fund – but this is a known risk with property funds. And I can see the adviser discussed whether it might be a good time to consider switching the fund with Mr T, so I don't agree that sufficient attention wasn't paid to this. The fund in question was rated as medium so it wasn't something I'd consider shouldn't have been part of Mr T's portfolio. And the investment in property was part of a diversified portfolio, so I don't think Mr T was overexposed to the risks inherent in investing in property.

Mr T has also raised concerns with the amount of cash held in his portfolios and the fact that he wouldn't receive returns on this. Firstly I should say that holding a small amount of cash in a portfolio is not unusual and is a normal part of a diversified portfolio. It can help reduce the risk of a portfolio but also allow an investor or investment manager to move funds quickly if a new investment opportunity arises. And a cash balance is often required to pay charges and fees. So I don't think holding cash within Mr T's portfolio would've necessarily been

unsuitable. But having looked at Mr T's investment portfolio breakdown, I think the high level of cash he refers to is the holdings within the actual funds and not Mr T being directly invested in cash. Mr T was invested in a mix of funds and within those funds the fund managers held various levels of cash. This is very common (especially in property funds) as fund managers use it to make new investments within the fund, to balance risk, and to ensure funds are available for disbursements. So, I don't think SJP did anything wrong here.

Whilst I can understand that Mr T hasn't received the performance he was hoping for from his fund and that this is disappointing, I don't think this was due to anything SJP did wrong. It managed his portfolio in line with his attitude to risk but unfortunately returns can't be guaranteed and market conditions have at times been difficult.

### *Conclusion*

In conclusion I don't think SJP needs to do anything more to put things right. I think it did set out its charges to Mr T and charged him in line with what it agreed. Furthermore, it offered Mr T and his family special terms when they initially complained about their charges, and they agreed to these new terms. Mr T's portfolio was invested broadly in line with his attitude to risk and so I don't think it did anything wrong here.

I note that SJP offered £2,000 to attempt to settle the matter amicably and as compensation for the time taken looking into his complaint. This relates to complaint handling and not the merits of the case, so this is not something this service can make awards for. But I note the investigator asked SJP if this offer remained open and it said it did. So if Mr and Mrs T wish to accept this, they need to contact SJP to arrange this directly.

### **My final decision**

For the reasons explained above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 1 March 2024.

Simon Hollingshead  
**Ombudsman**