DRN-4938443

The complaint

Mrs R complains St. James's Place Wealth Management Plc ('SJP') gave her unsuitable advice when making an investment recommendation to her. She also complains about the fees paid for that service.

What happened

Mrs R first met with SJP in September 2020 to discuss investing the proceeds of a property sale she was expecting to complete shortly. In that meeting SJP recorded information about her and discussed its initial thoughts. Following that discussion, Mrs R and SJP agreed to meet again once the property had been sold.

Later when Mrs R was in receipt of the sales proceeds, she met again with SJP in May 2021. In this meeting SJP recommended Mrs R invest £250,000 in a Unit Trust which would be fed annually into an ISA, and £50,000 in an Investment Bond – a total of £300,000.

Around two years into the investment, unhappy with its performance, Mrs R withdrew £200,000 to help her daughter buy a property. She later complained to SJP about the advice it gave her. In summary she said:

- She incurred losses of around £53,000, which included £35,000 from the performance of the investment and £18,000 paid in charges.
- She was told the investment would be safe and provide improved returns compared to Building Society interest rates.
- Her investment would've performed better if she invested in a Building Society instead.
- She told SJP she wanted an investment which met her objectives within 18 months and what it recommended hadn't achieved that.
- She was unhappy with the fees paid given the poor performance.

As Mrs R hadn't received a response to her complaint, she asked our service to look into it.

When SJP did later issue a final response to Mrs R's complaint, it said:

- The advice it gave was suitable.
- It had fairly applied its charges.
- It agreed it took too long to issue its final response as well as causing upset in the updates it gave.

To apologise for the service provided Mrs R during her complaint, SJP offered her £200. Mrs R rejected SJP's offer and provided further comment around the charges she paid including that she wasn't aware she could stop paying the ongoing advice fees. While SJP didn't agree, it increased its offer apologising for the service received during the complaints process to £300, which Mrs R rejected.

One of our Investigators considered the complaint and at first thought it should be upheld. While he agreed with SJP that the advice was suitable, he didn't think SJP could fairly charge Mrs R for the ongoing advice she had paid for as it hadn't provided her with that service. He also thought Mrs R would've asked SJP to stop providing her with ongoing advice if she was aware she could. For those reasons, he suggested SJP refund the ongoing advice fees and pay 8% simple interest on that amount.

In response to our Investigator, Mrs R said:

- The level of risk she was advised to take was too high to try and match the rates offered by Building Societies.
- SJP misunderstood her needs for an investment which met her aims within 18 months of investing.
- SJP hadn't advised her to stop the ongoing advice fee or to encash her investment to avoid further loss.

SJP's reply to our Investigator said:

- The costs, including the ongoing advice fee, were disclosed, including the possibility to stop the fee.
- The review meetings took place.
- It didn't need to carry out a fresh fact-find each time and the updates recorded in the reviews were sufficient.
- It didn't discuss turning off ongoing advice fees as future reviews were being agreed by Mrs R so it thought she still wanted the service.

Our Investigator reviewed everything again and issued new findings. In doing so, he no longer recommended SJP needed to refund the fees. He said this was because the advice was still suitable despite Mrs R's further comments and SJP had evidenced the cost of the ongoing advice was disclosed and the service provided.

As an agreement wasn't reached, the complaint has been passed to me to decide.

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.

<u>The advice</u>

When SJP advised Mrs R, it needed to ensure the investment recommendation it was making to her was suitable. In doing so, *COBS 9A.2* required that SJP obtained sufficient information about Mrs R's investment knowledge and experience, her financial situation and objectives, including risk. And with that information recommended a course of investing which would be suitable for her.

When Mrs R met SJP in 2020 and 2021, it completed a 'fact-find' with her. This document records the questions asked and the answers given during those meetings. The key information recorded during those discussions are:

- Mrs R was 49, retired, in good health and divorced with three children, none of whom were dependent on her.
- She recently sold a property and was living with her partner.
- Her partner's will contained a clause which allowed Mrs R, on his death, to live in that

property for 18 months, after which the property would be gifted to his son.

- She received income from pensions which after expenses left her with a net disposable income of around £250 each month.
- She had no investment experience and had £350,000 in cash, of which £30,000 which was intended to be gifted to her daughter, and £53,000 in a cash ISA.

The evidence from the advice shows Mrs R's overall objective was to grow £300,000 above inflation aiming to keep pace with property prices, so she could retain this money's buying power in the future. This was highlighted as a need as Mrs R would only have a right to remain in her partner's property for 18 months should he pass away. Because of that the recorded aim for this money was to provide for future living arrangements, if needed. Investing for tax efficiency as well as a need for regular reviews were also recorded as being required.

To invest for those aims, SJP recommended £250,000 be invested against a low to medium level of risk, investing across a number of diversified funds. This would be held in a general investment account to be fed annually into an ISA, as far as the allowances allowed for tax efficiency. SJP recommended £50,000 be invested for the longer term as there weren't any immediate foreseeable needs for that money. As this amount could be invested for longer than five years, SJP recommended she take a medium level of risk with this money, again investing across a number of diversified funds. Both of these were invested against SJP's standard portfolios with a small amount of rebalancing to include some ethical investments. This left £43,000 in accessible cash, after the intended £30,000 gift, which was to be left as a reserve.

Turning to the level of risk SJP advised Mrs R to take, I've not seen Mrs R was advised to take more risk than she was comfortable with. SJP says it gave her a brochure titled, "A guide to understanding the balance between risk and reward". Given it is a key part of SJP's advice process and the suitability report refers to it, which wasn't challenged at the time, I'm satisfied it's likely Mrs R saw this.

Mrs R was advised by SJP to be someone who had a lower-medium attitude to risk, which it defined as:

> "You are a cautious investor but want the value of your capital to keep pace with inflation. You are investing for at least five years. You want the opportunity of obtaining better growth in the longer term and are comfortable with some of your money, but not all of it, being invested in UK and overseas equities and in some cases property, which may fall in value. You accept it is possible you may lose some of what you invested."

In my opinion, that fairly reflects the investor Mrs R was and SJP's recommendations fit within this definition. She was someone looking for growth above inflation to keep pace with property prices and was willing to take some risk to do that. Most of the money was to be invested in line with that statement, across a number of diversified funds which would include investment in UK and overseas equity.

To meet Mrs R's aims of keeping pace with property prices, SJP recommended she take some more risk with £50,000. This medium risk level differed from low to medium in that medium provided higher equity exposure and the possibility for property investment. This part was to try and provide that extra growth to bridge a gap between inflation and property prices. While this was invested above Mrs R's stated risk level of lower-medium, I'm satisfied the overall portfolio was within a level of risk she would be comfortable with to meet her aims. It's clear to me that it was important her money grew enough to be able to purchase property in the future, and it's unlikely investing to keep pace with inflation on its own would do that. I'm satisfied SJP discussed this and has balanced her overall portfolio to be within her stated risk level of low-medium. I say this because the majority of her invested money is invested as such, with a £43,000 cash reserve helping to mitigate the risk of how the £50,000 would be invested.

Mrs R did want to include ethical investment and the fund SJP recommended to do that was at the higher end of its stated medium risk options. For the £250,000 investment, SJP advised she replace a 15% holding in a 'lower-medium' fund with 5% in ethical investment and 10% in a fund on the lower scale of its medium risk offerings. For the £50,000, which was investing a higher level of risk to the £250,000, 10% would be invested in the same ethical fund with 1% being reduced from each of the other proposed holdings.

Overall while the risk exposure to the portfolio likely increased slightly by doing this, I'm satisfied SJP has balanced that fairly against her overall risk profile.

Mrs R didn't have previous investment experience and some of the funds she would be investing in might expose her to more risk than I might expect to see for a first time investor. Having considered that, I'm satisfied the products SJP recommended wouldn't be unsuitable for Mrs R as a first time investor. I say this because she would be investing in a range of diversified funds with only a small relative proportion being exposed to higher risk assets which would be diluted against the rest of her portfolio, which in my opinion would still be suitable for a first time investor. I think it's likely at the time she was comfortable with that given her need to keep pace with property prices.

Looking at Mrs R's financial circumstances I think she could afford to invest this money and there wasn't anything foreseeable in her circumstances at the time that SJP ought to have given more consideration to. I say this because while her disposable income was lower which would affect the rate she could replace this money, there wasn't any future needs identified, and Mrs R was advised to retain £43,000 in cash for emergencies. Mrs R did within two years of the investment encash £200,000 to help her daughter purchase property, but I've not seen any such plans were disclosed to SJP at the time of the advice.

I understand Mrs R's recollections are that SJP knew she intended to invest for a shorter period of 18 months given concerns around her partner's health. I've carefully considered those recollections and the evidence around this – including the extracts and medical information Mrs R has provided.

But on balance I'm not persuaded SJP misunderstood Mrs R's objectives. I say this because the discussions evidenced at the time, in my opinion, clearly set out the key objective being to invest over the longer term to generate enough growth to provide sufficient money to purchase property, should any right to reside pass. This advice would require her partner to survive at least another three and half years from the advice. And while information has been provided about his medical issues, which it is said the same adviser was aware of, I'm not persuaded there was an imminent concern at the time for his mortality. I can't then fairly say SJP should've recommended the shorter investment term Mrs R thinks it should've.

I've also considered what Mrs R has said about feeling her investment would've performed better had she invested at Building Society rates instead. I have to consider such points without the benefit of hindsight. At the time Mrs R invested interest rates had been consistently around 0.1%, which was reflected in the low savings rates on offer at the time. Given that and as Mrs R's objectives for growth above inflation – which was around 2% and rising – I'm not persuaded SJP acted unfairly by not considering such products more than it did when it advised Mrs R.

It follows then, that I'm satisfied SJP gave Mrs R suitable advice as its recommendations allowed Mrs R to invest for growth above inflation aiming to keep pace with property prices in a tax efficient manner while investing in line with her risk tolerance and capacity. While I understand why the performance of her investment caused her worry, I've not seen I can attribute that to any failing in SJP's advice, rather it appears to have been caused by movements in the underlying markets.

Fees

I've carefully considered what SJP told Mrs R about the fees she would be paying SJP for its advice service.

From reviewing the documentation Mrs R was given around the time of the advice, I'm satisfied the cost of the advice and service being provided to her were clearly disclosed. SJP explained the costs in a number of documents I'm satisfied on balance it provided Mrs R with.

I say this because SJP set out its fee information across a number of documents, some of which require her to sign to declare she received. Information was also provided in the product illustrations SJP has evidenced was sent to her, along with evidence that SJP discussed fees during the advice meeting which Mrs R has signed to acknowledge took place. I also think its likely SJP provided Mrs R, given it's part of the standard documentation it gives to new clients, a document titled "Key facts about our services and costs" when they met. This document provides, among other information, key details about SJP's charging structure.

Having reviewed those documents, I'm satisfied SJP has clearly and fairly disclosed the charges for its advice. The product illustrations set out her specific initial and ongoing costs of those products, and the suitability letters set out the ongoing advice and administration costs for SJP's services.

Included within the information about its ongoing advice service, SJP disclosed its annual fee for this was 0.5% of the investment value. Alongside this is also a statement which sets out if Mrs R no longer wanted to receive that service then she can ask for it to be stopped. SJP hasn't set out precisely what is included in that service but broadly I would expect to see that it reviewed Mrs R's situation at regular intervals, typically annually, and recommend whether any action on her investments was needed. It follows that SJP clearly disclosed these costs at the outset and Mrs R agreed to them.

Turning to whether SJP provided the ongoing advice service Mrs R paid for, SJP hasn't provided me with the evidence we'd typically see to show the level of service provided. But in Mrs R's case, where she hasn't disputed these took place and as SJP has recorded meeting notes which sufficiently evidence similar discussions took place to those a fact-find would show. Importantly these meeting notes show these discussions did to recommendations to make changes to the portfolio. On balance then I'm satisfied SJP carried out a reasonable service when providing the ongoing advice reviews Mrs R was paying for.

I've also considered whether SJP has provided those reviews with sufficient regularity, given we'd expect these to take place at least annually. SJP has evidenced review meetings taking place on the following dates:

- 10 November 2022
- 8 November 2023
- 10 June 2024

The first review took place more than one year from June 2021 when the initial advice had been implemented. I've not been provided with a clear explanation as to why this is, but I can see that recently the reviews have realigned with the initial implementation of the advice, with the most recent review happening in June 2024. Which is the third complete year from the initial implementation of the advice.

I think the first review meeting happened later than it should've. But on balance the records of that November 2022 meeting show Mrs R was deeply concerned by the performance of the markets which led to a rebalancing of her portfolio. In the following review in November 2023, Mrs R was still unhappy with the performance to the point she decided to encash and invest £200,000 in property instead.

In my opinion, given the high volatility in the markets in 2022 and 2023, it's likely whenever the first review took place Mrs R would've been dissatisfied with the performance and similar investment decisions would have been made, although it's unlikely how she was invested was unsuitable with the changes being more to change specific exposures. These changes had they happened earlier are unlikely to have prevented Mrs R's concerns about performance given how markets were generally performing then and her dissatisfaction with the performance since. It follows then I think even if the delay in the first meeting was unprompted by Mrs R, I'm not persuaded actions taken in the first review would been significantly different had the meeting occurred around June 2022 rather than November of that year.

I note the reviews have realigned back to the initial investment being made and even though the first review was late, Mrs R has received the reviews she has paid for with sufficient regularity overall. I'm not persuaded then that SJP needs to reimburse Mrs R any fees as I've not seen she's overpaid for any particular review period. I understand why Mrs R feels the payment of these fees is unfair given what she's said about the performance of her investment. But that isn't fair reason for me to say SJP should reimburse those fees where it disclosed at the time of advice the fee is payable regardless of how the investment performs.

It follows that as SJP fairly disclosed the fees and Mrs R received the service she was paying for I can't fairly say SJP need to reimburse her for those fees.

I'm sympathetic to the situation Mrs R's found herself in in this case. But the decision I make here must be fair to all parties in this dispute. SJP offered Mrs R £300 which it says reflects the delays in answering and how it handled the complaint. Having considered this offer, I think it fairly reflects the frustrations and upset caused to Mrs R during the complaints process. And so, I won't be directing it to do anything more.

My final decision

Given the reasons above, my decision is that St. James's Place Wealth Management Plc should pay Mrs R £300.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 13 February 2025.

Ken Roberts
Ombudsman