DRN-4983011

The complaint

Miss A complains that she was given unsuitable advice by St. James's Place Wealth Management Plc ("SJP") to surrender an offshore bond and invest in two SJP bonds.

What happened

In August 2014 Miss A met with SJP, having been referred by a friend. She wanted advice on how to invest the cash she held in her bank account, as she wasn't happy with the interest rates. Her monetary assets consisted of £85,000 in bank accounts, £15,000 in an investment ISA taken out earlier that year, and around £270,000 in an offshore investment bond, from which she took a monthly income. SJP advised her to invest £70,000 of the cash held in her bank accounts in an onshore SJP bond, split equally across two funds, the Deferred Income Portfolio and the Managed Portfolio, which were classified by SJP as medium risk.

In December 2014 Miss A met with the adviser again, to discuss the offshore bond, which was worth around £270,000 at that time. In January 2015, she was advised to surrender it, and invest £260,000 into an onshore SJP bond in the Immediate Income Portfolio, which had a risk level of lower-medium. In surrendering the offshore bond, Miss A incurred an early withdrawal charge ("EWC") of £5,107.20 and SJP estimated she would pay income tax of around £18,805 on the realised gain. However, they said this tax would be payable at any time the bond was surrendered in future, and not including that charge, the SJP bond would be cheaper overall. Miss A was also advised to use SJP's ongoing advice service, at a cost of 0.5% of the value of her investments per year. The following events then happened:

- February 2016 – Miss A started taking regular withdrawals from the bonds.
- 17 June 2016 – Miss A switched both bonds into the Money Market fund.
- 6 August 2016 – Miss A switched both bonds into the Immediate Income Portfolio.
- 23 March 2018 – Miss A switched both bonds into 25% medium risk in the Managed Fund, with 75% remaining in the lower-medium Immediate Income Portfolio.
- 31 August 2018 – Miss A switched the 75% of both bonds from the lower-medium fund into the Managed Fund.
- 14 September 2021 - Miss A surrendered both SJP bonds, receiving a total of £82,750 for the first bond, and £312,255.86 for the second, including the withdrawals.

Upon surrender, she didn't need to pay any additional income tax, as 20% was treated as having already been paid. Around the time of surrender, having spoken to a different financial adviser, Miss A also made a complaint about the advice she was given. Though Miss A is represented in this complaint, for simplicity I'll just refer to her and not her representative. Miss A said that due to her low income, she didn't pay income tax, so investing in onshore bonds wasn't suitable as it meant the gains were automatically taxed at 20%, which she couldn't reclaim. She also felt the ongoing advice service hadn't been properly fulfilled, arguing there hadn't been any thorough analysis of her circumstances.

SJP didn't uphold the complaint overall, primarily because Miss A was a basic rate taxpayer at the time of the advice, not a non-taxpayer. Regarding the ongoing service, they said that the adviser either had completed reviews, or had attempted to. Miss A remained unhappy and brought the complaint to our service.

An investigator at our service considered the complaint and upheld it in part. He found the August 2014 advice was unsuitable, due to the level of risk involved – he said SJP ought to have advised Miss A to invest in the lower-medium Immediate Income Portfolio, and SJP should compare how much she would have received if she had done so, up to the point she moved into that fund in August 2016. He found that the second bond was suitable, and that the ongoing service had been sufficiently provided.

SJP agreed with this – but had some comments about the redress, including suggesting that any redress should be reduced by an amount to reflect the tax Miss A would have paid, as that would have been the case regardless of the fund held in the bond. Miss A didn't accept the investigator's opinion, setting out in detail her tax position and why her complaint about both bonds should be upheld, saying that SJP weren't clear about their charges when performing the comparison with the offshore bond. She said that an ISA with a unit trust feeder, or an offshore bond, would have been more suitable. With regards to the ongoing service, she said this wasn't thorough enough – the assessment ought to have been detailed about why the investments continued to be suitable.

SJP made a further offer – to calculate redress as though £150,000 had been invested in a unit trust ISA feeder, to utilise Miss A's future ISA allowances. Miss A rejected this as it didn't address everything. As she disagreed, the complaint was passed to me for a decision.

My provisional decision

I issued a provisional decision as follows:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

As this complaint is about two separate pieces of advice, and the ongoing service, I've set out my findings on each separately, for clarity.

The advice given in August 2014

I need to consider whether SJP acted fairly and reasonably in the advice they gave to Miss A to invest in the bonds. When giving advice SJP had certain obligations towards Miss A, including making a suitable recommendation, based on Miss A's circumstances, objectives, investment experience and attitude to risk. The information supplied by SJP about their recommendation needed to be clear, fair and not misleading, to allow Miss A to make an informed decision about whether to accept the recommendation.

At the time, the adviser completed a fact find document, recording Miss A's circumstances. It was recorded that Miss A had £2,200 per month in net income and after expenditure, had £1,080 per month disposable income. She had three dependent children aged 14,17 and 22. The adviser recorded that Miss A's annual income from employment was £9,000, she received £1,920 in non-taxable benefits and she took withdrawals of £15,000 from the offshore bond.

I've found that the personal allowance for income tax was £10,000 in August 2014. Miss A had originally invested £320,000 in the offshore bond and could take 5% of this each year without paying tax – a maximum of £16,000. So, I'm convinced that as far as the adviser ought to have been aware, Miss A was a non-taxpayer in August 2014. I note that page 14 of the fact find document, which was meant to capture tax rates, was left blank by the *adviser. It also appears that Miss A wasn't making use of her capital gains tax allowance, which at the time was £11,000 per year.*

While she didn't have a lot of leeway in terms of the additional income she could receive without paying income tax, I'm not convinced the adviser properly considered Miss A's tax status when recommending investments. If they had, I don't think they'd have considered an onshore bond to have been a suitable investment as the growth in the funds is taxed, and Miss A was unable to reclaim it, regardless of her tax status.

I can see that in the suitability letter the adviser detailed that ISAs had been discounted due to the fact she'd already used that year's allowance. A unit trust account was also discounted, apparently because Miss A wanted to be able to take tax efficient withdrawals and the adviser thought that wouldn't be possible. However, the growth in a unit trust is usually taxed under capital gains tax, not income tax and given she wasn't using any of her capital gains tax allowance, I'm not convinced it was reasonable to dismiss this course of action. While Miss A had used her ISA allowance that year already, a unit trust could feed into an ISA in future.

Further I note that in both the fact find and suitability letter the adviser said "We discussed the fact that her existing investment bond is an offshore bond and its tax implications. I told her I would not recommend this type of arrangement for the new investment over an onshore investment bond." However, in neither document does the adviser explain why he wouldn't suggest an offshore bond. While offshore bonds can sometimes be more expensive than onshore bonds, for non-taxpayers the benefit of not having tax automatically deducted often outweighs the increased costs.

Overall, I'm persuaded that the wrapper sold was not suitable for Miss A as she could have invested in more tax efficient ways, and I'm not persuaded the adviser acted reasonably in discounting those methods.

I've also considered the level of risk Miss A was advised to take. The funds chosen meant that between 70% and 80% was exposed to equities and alternative investments, with the remainder in lower-risk assets. At the time of the advice, the bulk of Miss A's money was held in the offshore bond – this was invested at a 'medium' level of risk and was managed on a discretionary basis. She also held £15,000 in an ISA, but we don't have evidence of the level of risk for that investment.

Miss A was not a very experienced investor – she had only invested for the three years prior to the advice, and the bulk of her money was being managed on a discretionary basis, which meant she wasn't making regular decisions about how it should be invested. There is very little documented about her knowledge of the different asset types and the risks these could pose. I'm not convinced that her attitude to risk could fairly be described as someone who wanted to take the amount of risk involved in these portfolios.

In addition, I'm not convinced she had the capacity to take the risk involved. Though she had a disposable income, that was solely due to withdrawals taken from an investment – so she was eating into the value of the offshore bond by taking those withdrawals. The amount being invested meant that Miss A had just £15,000 in a no-risk environment, so a significant market downturn could have a severe impact on the value of her overall assets.

I'm also conscious of the source of the funds – Miss A had the money due to a divorce settlement. She needed the funds to maintain her lifestyle, and also support her three children who were financially dependent on her. The children were at a stage where significant further education costs could be incurred. So, I'm not convinced this was a fair and reasonable level of risk for Miss A, given her circumstances.

In summary, I'm persuaded that both the wrapper and the underlying investment funds were unsuitable for Miss A. While I appreciate SJP has already agreed to partially uphold this part of Miss A's complaint up until 2016, as I'm persuaded the wrapper is also unsuitable, I don't think their current offer is fair and I've set out below how this should be put right.

I understand Miss A didn't pay any additional tax when she surrendered the SJP bond in 2021, and as I'm persuaded she could have invested in a more tax efficient manner, the benchmark I've indicated doesn't include a deduction for tax. I'm satisfied the method I've set out puts Miss A in a reasonable approximation of the position she'd be in now, had her tax status and ability to take risk been fairly considered.

The advice given in January 2015

In December 2014 the adviser updated the fact find and recorded that Miss A was earning £11,000 from employment and was taking £19,200 per year from the offshore bond. The personal allowance was still £10,000, and she was taking more than 5% per year from the offshore bond. I note that Miss A has pointed to other tax savings available, including the personal savings allowance, but this wasn't available at the time of the advice as it wasn't introduced until April 2016. So, I'm discounting that allowance for the purpose of considering the suitability of the advice. I'm satisfied Miss A was a basic rate taxpayer at this time.

That being said, the adviser recorded that Miss A was now planning on retiring at 60, where in the previous fact find she was planning on retiring at 65. She was 50 years old, and it was noted that she planned to invest for ten years – indicating that she wished to access her money at or around retirement. Although the changes to state pension age for women hadn't been implemented at the time of the advice, it was already well known in 2014 that women of Miss A's age wouldn't be in receipt of state pension until 65. Miss A had a final salary pension scheme, but the adviser didn't record the date she would be able to access it – I'm mindful that most are accessible at age 65.

The above factors – Miss A's retirement date, likely pension receipt date and investment length - are important here, as they go to Miss A's likely future tax status when she was planning to fully encash the bonds. This goes to whether the advice to surrender the offshore bond and reinvest onshore was suitable for Miss A – I'll explain further.

In the suitability letter, the adviser said that although the advice to surrender the offshore bond would mean Miss A had to pay income tax, they weren't convinced there would be a point in future where this could be mitigated. So, they didn't include the amount of tax when doing a cost comparison between the offshore bond and the SJP bond. I'm not convinced this was a reasonable conclusion to draw, given that it was likely Miss A would have several years between finishing employment and starting to take her pension, where she could have utilised her personal allowance and strategically surrendered this bond.

Before going into the calculation, I wanted to address a point Miss A has made – she said she doesn't think the charges comparison included the advice fee she paid – but I am persuaded it does. The initial advice fee was 4.5% of the amount invested, so £11,700 – however it was not immediately deducted from Miss A's investment. Instead, it was incorporated into the annual management charge ("AMC") of the bond. The early withdrawal charge is designed in part to recoup that initial fee, if more than the yearly 5% withdrawal allowance is taken each year. Having compared the charges SJP included in their calculation to the illustration, I'm satisfied that SJP did include the relevant charges – except for the tax.

SJP had concluded that the offshore bond was more expensive than their bond. Based on the figures provided in the suitability letter, I've calculated that on an investment of £260,000, the offshore bond was around £1,200 per year more expensive than the SJP bond. Although surrendering it would mean Miss A incurred a £5,107.20 EWC, when set off against the yearly savings in charges, it would take around four years to recoup that EWC when invested with SJP.

However, that didn't account for the £18,805 in tax Miss A had to pay on surrender of the offshore bond – if that was added to the EWC, then the total expense of £23,912.20 would have taken almost 19 years to recoup in the lower charges with SJP. Miss A was only planning on investing for ten years, and there was no guaranteed amount of growth in the SJP bond to make up for any difference. Overall, this makes the SJP bond much more expensive than the offshore bond. It follows that I find the advice wasn't reasonable, as it relied on incorrect information about Miss A's future tax paying status.

I can see that the adviser recorded several other reasons why Miss A wished to move to SJP, including to be able to access the SJP approach to investment management, and because she wanted regular advice about her bond. From the fact find and suitability letter I agree that Miss A was interested in regularly meeting with an adviser – but this is separate from SJP's approach to management. I've not seen convincing evidence that she was particularly interested in SJP's investment management approach, over any other firm. This appears to have been a by-product of the advice, rather than a primary objective for Miss A.

In the suitability letter the adviser said "We discussed the possibility of you simply transferring the servicing rights of your investment bond to an IFA but you felt that as you did not know any well enough you did not wish to hand over the responsibility to them. You have recently become an investor with [SJP] and have been pleased and impressed with the service you have received so far."

I'm not persuaded that Miss A would have said the same, had she been aware of the actual position regarding tax and if the adviser had presented it as unsuitable for her to move the investment. This is because she was reliant on this money to support her over the next 15 years – it's unlikely she'd have given up almost a year's income from the bond simply to move to this adviser.

Overall, I'm persuaded that the advice to surrender the offshore bond was unsuitable, and had suitable advice been given, it likely would have remained in place and Miss A could have strategically surrendered it in future, without paying tax.

Miss A's offshore bond was managed on a discretionary basis and it's likely there would have been changes to its composition over the years, which likely would be complicated for SJP to trace. So, in considering how SJP should calculate how much Miss A's investment would be worth had she not surrendered the offshore bond, I've chosen a more straightforward way to calculate redress here, as set out below. This is designed to broadly reflect an investment involving the level of risk Miss A was taking in the offshore bond.

Miss A did change the amount and frequency of the withdrawals she was taking when she moved to SJP, and when carrying out the calculation SJP should assume the same change would have happened if she'd remained with the offshore bond.

Miss A's offshore bond was worth around £270,000 in December 2014. After the EWC and the amount reinvested with SJP, this wouldn't have left Miss A enough to pay the tax bill she'd incurred as a result of the surrender, which SJP estimated to be around £18,805. So, it's likely that she must have paid some of that bill from the amount she held in cash, and some from the surrender value. On the amount paid from her cash savings, she's been *deprived of use of that money since she paid the bill, so SJP should refund the amount she paid from cash, plus simple interest at a rate of 8% per annum, from the date she paid the tax to the date of settlement. I'm conscious that the £18,805 quoted by the adviser was an estimate of the amount of tax Miss A would have to pay and may not have been the final amount. So, Miss A would need to provide proof of the date and amount of tax paid to SJP, for SJP to calculate and pay this amount.*

The ongoing advice charges

The adviser included an ongoing advice charge ("OAC") of 0.5% in both bonds sold. Based on the information set out in the suitability letters and illustrations for the bonds, the OAC was payable for the adviser conducting a review of Miss A's circumstances to ensure the investment remained appropriate. In the suitability letters the adviser said that this would happen annually, around the anniversary of the investments. As the OAC was paid from the start of Miss A's investment, and the first review was designed to be around the anniversary, I've concluded that the OAC pays for each review in advance of it happening. If instead they were taken after the reviews, then that would mean Miss A was charged twice for the first instance of advice, and I'm not convinced that was SJP's intention.

Though Miss A started the investments at different times of the year, it looks like the reviews generally took place on the anniversary of Miss A's first meeting with the adviser – so around August each year. As the OAC is taken monthly from the investment, I think it's fair to say that the 12 fees paid prior to a review are attributed to payment for that review. With those principles in mind, I've considered the events that took place after the advice given in 2014 and the start of 2015, as follows:

- *3 July 2015 – At this meeting, only an ISA was discussed and the bonds were not reviewed. As this was a new investment with SJP, Miss A paid an initial advice fee. The bonds were not mentioned, so I don't consider this to be a review conducted in return for the OACs charged on the bonds.*
- *7 January 2016 – Miss A began withdrawing from the bonds, but there is no evidence of advice given at this time or a review by the adviser.*
- *June and August 2016 – Miss A made switches of the funds held in her bonds. Though there's no suitability letters setting out the reasons for this, from everything I've seen of Miss A's experience and knowledge (as set out above) I'm not convinced she'd have done this without advice. So, I'm satisfied its likely at least one review took place in the summer of 2016.*
- *24 August 2017 – SJP's contact notes show a face-to-face meeting took place and it was noted the adviser "held a review meeting with [Miss A] and also discussed life cover, arranged to call in a few weeks to discuss further". Though there's no suitability letter available from this meeting, I'm persuaded that her existing products were discussed, given the use of the word "also".*
- *March and August 2018 – Fund switches were made in both bonds and I have suitability letters setting out the advisers reasons for this.*
- *6 August 2019 - SJP's contact notes show a meeting took place and it was noted "annual review client also wished to change bank account her income is being paid into". The income came from the bonds, so I'm satisfied they were discussed, and that a review took place as it ought to have at this time.*
- *31 July 2020 – A review took place by phone, and a suitability letter was issued on 4 August 2020 setting out that no changes were required.*
- *2 July 2021 – A review was offered, which Miss A declined. As set out above, the OAC was for paid to the adviser in return for the act of giving advice, not the offer of advice.*

Looking at the frequency of the reviews that took place, I'm not satisfied they all took place when they should have. Based on the above timeline, I'm satisfied the reviews in 2015 and 2021 didn't take place. So SJP shouldn't benefit from the OAC taken from the bonds between August 2014 and August 2015, and between August 2020 and 2021. When Miss A surrendered the investments in September 2021, the value of the bonds would have been higher by the value of those charges and any investment returns the charges would have gone on to benefit from.

So SJP should pay Miss A the difference between what the bonds were worth on surrender, and what they would have been worth, had the fees not been deducted. SJP should pay Miss A 8% simple interest on that difference, from the date she surrendered the bonds, to the date of settlement. When carrying out the below calculations, the difference without interest should be taken into account in the "actual value" of the bonds.

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 think Miss A would have invested differently. It is not possible to say precisely what she would have done, 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 should SJP do?

To compensate Miss A fairly, SJP must:

- *Calculate if there's been any loss of investment returns by:*
    - *Comparing the performance of Miss A's investments with that of the benchmarks shown below and pay the difference between the fair values and the actual values of the investments. The calculations should be carried out separately for each bond. If the actual value is greater than the fair value, no compensation is payable under the calculation for that bond.*
    - *SJP should not offset the calculations against each other, as the advice for each bond served different purposes and should be considered as two distinct events.*
    - *If those calculations show a loss, it should be paid to Miss A.*
    - *SJP should also add any interest set out below to the compensation payable.*
- *Regardless of the outcome of those calculations, SJP should:*
    - *Refund the OACs for the periods of August 2014 and August 2015, and between August 2020 and 2021, plus the growth they'd have achieved had they remained invested. 8% simple interest per year should be paid on that difference from the date Miss A surrendered the bonds, to the date of settlement.*
    - *Upon receipt of proof of payment, SJP should refund the amount Miss A had to pay in tax as a result of surrendering the offshore bond, less the surplus Miss A had from the surrender of the offshore bond, after the EWC was*

applied and the £260,000 was invested with SJP. SJP should also pay 8% simple interest per year on that amount, from the date Miss A paid the tax to the date of settlement.

Income tax may be payable on any interest awarded.

Portfolio name	*Status*	*Benchmark*	*From ("start date")*	*To ("end date")*	*Additional interest*
£70,000 invested in August 2014	*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*	*27 August 2014*	*14 September 2021*	*8% simple per year on any loss from the end date to the date of settlement*
The offshore bond	*No longer in force*	*FTSE UK Private Investors Income Total Return Index*	*Date the offshore bond was surrendered*	*14 September 2021*	*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 investments at the end date – including the refund of the OAC plus growth (but not interest), as set out above.

Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark. For the advice given in January 2015, the value at the 'start date' should be the amount Miss A's offshore bond was worth on the date Miss A surrendered it, prior to the deduction of the EWC.

Any withdrawal from the two bonds 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.

Why is this remedy suitable?

For the August 2014 bond I have chosen this method of compensation because:

- *Miss A wanted income with some growth with a small risk to her capital.*
- *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 she was prepared to take a small level of risk to attain her investment objectives. So, the 50/50 combination would reasonably put Miss A into that position. It does not mean that 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.*

For the January 2015 bond I have chosen this method of compensation because:

- *Miss A wanted income with some 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 Miss A's circumstances and risk attitude."*

Replies to the provisional decision

Miss A replied and said overall she was happy with the outcome, with two exceptions. She unfortunately no longer has the proof of the tax paid to HMRC on surrender on the offshore bond, though she remembers paying it. She feels that it would be unfair that redress in relation to that relies on proof, when SJP has already given an estimate, and feels that estimate should be used. She also argued that a calculation should be included in the redress for the loss of her ISA allowances. If her full ISA allowances had been utilised it would mean she would be enjoying fully tax-free growth and income from this point onwards. This has not only had a material effect to date but will continue to do so in future.

SJP replied, and in summary they said:

- They accept there is an inconsistency in the recorded earnings between August and December 2014. Rather than concluding this was a change to circumstances, they think it would be more accurate to consider the December earnings as the correct ones, and apply these to Miss A's circumstances in August.
- Even if they agreed Miss A was a non-taxpayer, then due to their internal guidance, they still would have recommended an onshore bond (or a unit trust) rather than an offshore bond. This is because if investing for at least 10 years, then their illustrations show greater potential returns on an offshore bond - but the anticipated gains on the amount Miss A was investing in January 2015 would have likely generated a large gain. So, if a large gain after 10 years would push a non-taxpayer into the tax paying brackets, then the onshore bond is as good a choice as the offshore, in their opinion.

- Regarding the option of a unit trust and ISA, they said that Miss A had wanted to invest separately with the provider she'd chosen in the 2014/15 year and indicated that she wanted to continue doing that in future years.
- They don't accept that Miss A would have had a five-year gap between the ages of 60 and 65 after she planned to finish working and before she took her pension. This was because the type of pension she had likely had a retirement age of 60.
- They expected Miss A to be a basic rate taxpayer on encashment, so maintain the tax from the offshore bond couldn't have been mitigated, based on Miss A telling the adviser her tax status wasn't likely to reduce in future to influence a significant tax saving point.
- Looking at the difference in cost of Miss A moving to SJP from her existing offshore bond, they provided a critical yield test which showed that the SJP bond was less expensive by 0.25%, despite the fact it included the cost of initial and ongoing advice. They said advice was important to Miss A, and SJP did see her attitude to risk change throughout the time she was with them. If she'd remained in the offshore bond, the cost differential would widen even further, as she'd have paid for advice on top of the existing charges. They feel the fact the cost of advice was encompassed in their charges, should also be considered when discussing the impact of the tax liability and EWC on the difference in cost of the products.

SJP also provided comments on the redress method, in case the complaint were still to be upheld. Regarding the ongoing advice fees, they said:

"If we are making a comparison of the SJP investments against the recommended FOS benchmarks, and that results in a loss, then it would not be appropriate to make a separate award in respect of a refund of advice fees. This has previously been agreed with FOS on other cases, and the reason for this, is that the benchmark makes no deduction for charges, whereas the SJP investment values are net of all charges, and therefore encompassed in the calculation.

We would only make a refund of the advice fees separately, if the benchmark calculation showed no loss or the result was less than the refund of service fees."

Regarding the benchmark chosen for the January 2015 advice, they think this represents an attitude to risk of medium – but Miss A predominantly had a lower-medium attitude to risk when she was an SJP customer. In that light, it's reasonable to presume she would have changed her risk appetite had she stayed with the offshore bond. They don't understand why a low-medium benchmark has been chosen for the first investment, where a medium risk one has been chosen for the December one.

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 not been persuaded to depart from the findings set out in my provisional decision and will explain why.

Regarding the advice in both August 2014 and January 2015, I'll start by addressing Miss A's taxpayer status, in particular her potential future status. Whether Miss A's personal pension was set to be taken from 60 or 65, I consider it more likely than not that it could have been deferred in any event.

It's accepted that Miss A didn't have much investment experience or knowledge, yet I note SJP's has raised that it was Miss A who told the adviser her tax status was unlikely to reduce. Given her lack of experience, I consider it would have been reasonable for the adviser to do more to explore this with her to ensure she understood the options available. It's already been accepted by SJP in their reply to my provisional decision that the adviser didn't gather enough detail especially in August 2014, and there's little information recorded about the type of pension she held. If the adviser had taken more thorough steps to understand her tax position, then there could have been a more detailed discussion about future potential tax status.

This was particularly important because Miss A had such a low income – it would have been clear to an adviser that there would have been ways to mitigate tax. I'm satisfied that its reasonable that the adviser could have foreseen that with some simple planning, it could be arranged that she didn't have any income from work or pensions for several years. So even if her pension were to end at 60 not 65, as it likely could have been deferred, this doesn't change the fact the adviser didn't take reasonable steps to understand Miss A's tax situation in order to explore all the options.

So, my findings remain that an onshore bond was not suitable for Miss A – both in August 2014 and January 2015. Many of the other points SJP has put forward fall away because of Miss A's ability to mitigate the income tax payable after the age of 60 – including their comments on the critical yield, the discrepancies between the information recorded in August and December 2014 and their internal guidance on onshore compared with offshore bonds. I'm satisfied that it was foreseeable that Miss A could have managed the surrender of the bonds alongside managing her pension, to allow her to mitigate the tax payable on any gain from an offshore bond.

I've considered both SJP's and Miss A's comments on the potential use of a unit trust and ISA. As set out in my provisional decision, the main alternatives in terms of tax efficiency in the 2014/15 tax year were for Miss A to invest in an offshore bond or use her capital gains tax allowance to manage the gains from investing in a unit trust. Both options could have been tax efficient without the future use of an ISA at all. My role is to make a finding as to whether the advice given to Miss A was unsuitable – and I've concluded that it was, because of the other, more tax efficient, options available.

I agree that it is widely accepted across the industry that ISAs are generally the starting point for advice. Miss A was already utilising that year's ISA allowance and appears to have been comfortable managing that allowance herself. While an ISA would have been a possible product for her to take out in later years, it wasn't available at the time of the initial advice to invest a lump sum.

So, while the unit trust and using Miss A's future ISA allowance was one possible suitable option, it wasn't the only suitable option. The benchmarks I've set out are a method that reasonably measures the financial loss Miss A has incurred and they broadly reflect the position Miss A would be in now, but for the advice. Bearing in mind our service's role as an informal resolution service, and based on the specific facts of this case, I've not been convinced it would be fair to award further redress to account for Miss A not fully utilising her ISA allowance.

I note Miss A hasn't got a record of the exact amount she paid to HMRC on surrender of the offshore bond. On HMRC's website, it says that individuals can request employment history information from any year, if it's in relation to a claim for compensation. So, on the balance of probabilities, I think if Miss A gets in touch with HMRC she'll likely be able to get this information to provide it to SJP. I don't consider this to be an unreasonable step for her to take given the actual value of the offshore bond changed between the date of SJP's estimate and the date it was surrendered. The amount in question is not small and I'm not persuaded it would be fair or reasonable to ask SJP to pay it without evidence, particularly as Miss A hasn't provided proof that HMRC doesn't have this information.

Turning to SJP's comments on the level of risk the benchmarks I've used represent. As I've set out above, we are an informal service, and it is not always possible for us to be forensic in how a firm ought to calculate redress. Our use of benchmarks is reflective of that – we use them as a broad reflection of the types of returns an investor could have achieved when it's not possible to say precisely how much or where an investor would have invested.

SJP has said that the benchmark chosen for the January 2015 investment, the FTSE UK Private Investors Income Total Return Index, is reflective of a medium level of risk. In my provisional decision I didn't use the word medium – rather I said that its appropriate because Miss A wanted to take "*some investment risk*". Currently, the index includes around 45% equities and 40% fixed interest, with the remainder in cash and other investments.

I note this is somewhere in between the make-up of what SJP had categorised as a lower-medium risk and their medium risk portfolios in 2014. For instance, their lower-medium risk Immediate Income portfolio held around 30% equity, 50% fixed interest, with the rest in property and cash. Their medium risk Managed Funds portfolio held over 70% equities, 11% bonds and the remainder in cash and alternatives. In using this benchmark, I don't agree with SJP that I am suggesting Miss A would have invested at what they call a 'medium' level of risk.

We have very little information about the make-up of the portfolio Miss A held in the offshore bond. Though it was called 'medium' the investment manager would have had their own risk scale and definitions of each category, which could have been different to SJP's own definitions. They could have had more or less than the five categories for risk that SJP used.

As I've set out, and I'll repeat below in the summary, the benchmark is not designed to say Miss A would have invested in exactly the same investments that the benchmark includes. Rather it's a broad reflection of the types of returns she could have achieved. I do note Miss A varied her investments over the years. In using this benchmark, I acknowledge it is a broad measure – but in the interests of simplicity of redress, I remain satisfied it is a fair one to use in these circumstances.

There is a different benchmark for the August 2014 advice, because at that time the bulk of Miss A's assets were already at a higher level of risk. As set out in my provisional decision, I'm not satisfied she had the capacity to take the amount of risk that she was advised to take in August 2014. So, I consider a benchmark reflecting a lower-level risk to be appropriate to use regarding that advice.

In relation to the ongoing advice charges ("OAC") I've not received any further submissions from either Miss A or SJP about the reviews themselves, and so I see no reason to depart from the findings set out in my provisional decision on this complaint point. I'm satisfied the reviews in 2015 and 2021 didn't take place and so SJP shouldn't benefit from the OAC taken from the bonds between August 2014 and August 2015, and between August 2020 and 2021.

Regarding SJP's comments on the refund of the ongoing advice charges and how this has been treated in other complaints our service has dealt with. I acknowledge this may have been the case. However, the three complaint points of OACs and the two pieces of advice are about separate and distinct events – they are only being dealt with under the same complaint by our service for simplicity. The redress calculations ought to reflect that.

In refunding the advice fees regardless of the calculation about the mis-sale, I'm satisfied this ensures Miss A is put in the position she'd have been in, had the fees not been taken when advice wasn't given. If I were to use SJP's suggested method, this could result in an outcome where SJP could keep the fees for advice that wasn't given, which isn't a situation that would be fair.

For the above reasons I don't consider it fair that the loss Miss A has experienced under the OAC part of her complaint, should be offset against the suitability calculations. I've made slight changes to the wording of the redress calculation that I've set out, in order to ensure clarity on this. Overall, I'm satisfied that the method I've set out is fair and provides clarity to both parties regarding the amounts payable for each of the events.

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, 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 should SJP do?

To compensate Miss A fairly, SJP must:

- When Miss A surrendered the investments in September 2021, the value of the bonds would have been higher by the value of those charges and any investment returns the charges would have gone on to benefit from. SJP should calculate the difference between what the bonds were worth on surrender, and what they would have been worth, had the fees I've set out not been deducted.

- Compare the performance of Miss A's investments with that of the benchmarks shown below. The calculations should be carried out separately for each bond and not be offset against each other, as the advice for each served different purposes and should be considered as two distinct events.

    - If the *fair value* is greater than the *actual value* (as defined below) and is also greater than the calculation regarding ongoing advice charges set out above, SJP must pay the difference between the *fair value* and the *actual value.*

    - If the *fair value* is greater than the *actual value*, but less than the calculation regarding ongoing advice charges set out above, then the amount under the latter calculation must be paid.

    - If the *actual value* is greater than the *fair value*, then SJP must pay the amount calculated regarding ongoing advice charges as set out above.

    - SJP should also add any additional interest set out below to the compensation payable.

- Regardless of the outcome of those calculations, SJP must, upon receipt of proof of payment, refund the amount Miss A had to pay in tax as a result of surrendering the offshore bond, less the surplus Miss A had from the surrender of the offshore bond, after the EWC was applied and the £260,000 was invested with SJP. SJP should also pay 8% simple interest per year on that amount, from the date Miss A paid the tax to the date of settlement.

Income tax may be payable on any interest awarded.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
£70,000 invested in August 2014	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	27 August 2014	14 September 2021	8% simple per year on any loss from the end date to the date of settlement
The offshore bond	No longer in force	FTSE UK Private Investors Income Total Return Index	Date the offshore bond was surrendered	14 September 2021	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 investments 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. For the advice given in January 2015, the value at the 'start date' should be the amount Miss A's offshore bond was worth on the date Miss A surrendered it, prior to the deduction of the EWC.

Any withdrawal from the two bonds 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.

Why is this remedy suitable?

For the August 2014 bond I have decided on this method of compensation because:

- Miss A wanted income with some growth with a small risk to her capital.
- 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 she was prepared to take a small level of risk to attain her investment objectives. So, the 50/50 combination would reasonably put Miss A into that position. It does not mean that 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.

For the January 2015 bond I have decided on this method of compensation because:

- Miss A wanted income with some 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 Miss A's circumstances and risk attitude.

My final decision

I uphold the complaint. My decision is that St. James's Place Wealth Management Plc should pay 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 am required to ask Miss A either to accept or reject my decision before 4 October 2024.

Katie Haywood
Ombudsman