DRN-4997230

The complaint

The estate of Mrs L ('the estate') is represented. They say St. James's Place Wealth Management Plc ('SJP') gave the late Mrs L unsuitable investment advice and that it may not have performed some of the Ongoing Advice Service ('OAS') for which it received an Ongoing Advice Charge ('OAC'). The *period of advice* was between 2011, when Mrs L sold her home and moved into a care home, and 2017, when she sadly passed away. Her daughter ('D'), who held a Power of Attorney ('PoA') for her, engaged with the SJP partners on her behalf during this period.

What happened

D and SJP held meetings between 2011 and 2017, all in relation to Mrs L's ongoing financial affairs and then, after her passing, with regards to her estate.

At the initial point of advice in 2011 Mrs L was widowed, she was in her late 80s, she was retired and she was debt free. She moved into a care home around June 2011, so the associated care home costs featured as the main aspect of her financial affairs, and of the financial planning conducted for her.

SJP's Suitability Report of 15 July 2011

This was issued to D after a financial planning meeting (for Mrs Ls benefit) between both parties. The report mainly confirmed, in relation to Mrs L, the following –

- The total value of her assets was £535,000 – consisting of the value of her home (£384,000), which was being sold, a cash holding of £36,000, shareholdings valued at £45,000 and the value of the estate she inherited from her late husband (£70,000). Based on this total value, her estate had no exposure to Inheritance Tax ('IHT').

- She had recently moved into a care home, the total annual cost of which was around £34,000, but was likely to increase over time. To cater for 'necessary extras' and other expenditure D estimated that she would need an additional £5,000 per year. The total annual expenditure of around £40,000 was unmet by Mrs L's total annual income of around £19,000 (consisting of spouse's pensions, state pension and Attendance Allowance), so there was a shortfall of at least £15,000 per year with regards to the care home costs alone.

- Her objectives were to derive additional income from her assets to resolve the shortfall and the estimated additional expenditure, to invest the value of her assets for growth and for such additional income, to maintain an emergency cash reserve of £10,000, and to conduct this financial planning in a tax efficient way. The report also states that D, on Mrs L's behalf, sought to take advantage of SJP's approach to investment management.

- Her home was already being sold. SJP recommended the sale of the shareholdings too. It considered them unsuitable for her and said – "… *without active management the shares could prove time consuming, expensive or exposed to higher risk, due to* *the limited spread*". On this basis, and excluding the emergency cash reserve, she would have £525,000 capital to invest.

- SJP recommended – the purchase of an Immediate Needs Annuity ('INA') at the cost of around £45,000 to provide Mrs L with an increasing annual income starting at £7,000 per year (tax free) to put towards her care home costs; investment of £304,320 in an SJP Investment Bond ('IB') which should provide annual tax deferred drawings, to serve as income, of £15,216; investment of £10,680 in an SJP Stocks and Shares Individual Savings Account ('ISA') to utilise her ISA allowance, and for tax free growth and income; investment of £100,000 in an SJP Unit Trust Feeder Account ('UTFA') for the purpose of feeding the ISA annually whilst also having potential for growth over time; and a loan of £65,000 to D which should provide Mrs L with an annual return of £2,595.

- SJP calculated that total annual income from its recommended solution in addition to Mrs L's pre-existing total annual income should result in a grand total of £48,422 income per year, net of income tax (with receipt of the loan returns, alone, being subject to tax); and this meant a surplus of around £8,500 above her £40,000 total annual expenditure needs.

SJP's Suitability Report of 4 November 2011

- Referred to financial planning meetings with D in July and September 2011, to Mrs L's house having been sold in August 2011 and to D having obtained the PoA for her in the same month.

- Objectives of the meetings and the report were – "*Care Home Fees planning*", "*Investment Planning*" and "*Inheritance Tax Planning*", alongside those in the previous suitability report.

- With regards to IHT, Mrs L had her nil rate band and around 86% of her late husband's nil rate band, so the total value of her estate at the time (£541,000) was not exposed to IHT.

- Her total annual income requirement was calculated as £41,400, and her income shortfall was broadly similar to what was stated in the previous report.

- Funds had been set aside and steps were underway for the agreed INA recommendation. After the INA, an annual income shortfall of £11,660 would remain. To address this, SJP maintained its previous ISA recommendation, recommended investment of £75,000 in the UTFA, and investment of £240,000 in the IB.

- Her care home fees were to increase each year, and the increase at the time was £2,808 per year. Scope for increases within her income were limited to a £430 annual increase in her pensions (not guaranteed) and a £210 guaranteed annual increase in the INA payments, but these did not meet the annual expected increase in her care costs. However, additional annual income from the ISA and UTFA (based on yields at the time) would total £3,911 and there would be a surplus annual income from the IB of £340, so these provided added scope to cater for the increases in care home costs. Furthermore, the revised recommendations meant she would have a remainder cash holding of around £159,000 which should attract annual interest, at the rate of 2%, of £3,186. Overall, taking all these into account, she should have an annual income surplus of £5,268 and she should be assured that any increases in the care home costs will be catered for.

- With regards to risk exposure, the IB was to have medium risk profile and the ISA and UTFA were to have a low-medium risk profile.

An addendum to the November 2011 report, issued in the same month, confirmed a revised approach to risk exposure for the IB, following a meeting between the parties on 4 November. It was decided that the IB would begin with a low/medium risk profile, with half of it invested in low-risk money market funds and with those funds being gradually switched, over 12 months, to mainly medium risk funds. Furthermore, D had decided to take less income from the IB, and to invest only £200,000 in the IB in order to use the estate's remainder capital to address the income shortfall (of around £3,000 for the first year) that would remain. D also revised the fund selections for the ISA and UTFA.

A report issued to D in January 2012 served as a follow-up on the INA recommendation, and confirmed the details of the specific INA plan that was to be purchased.

SJP's Suitability Report of 4 December 2012

- Related to new advice sought by D for the investment of £70,000 out of Mrs L's cash holding. Objectives were growth, income and administrative simplicity. The report's covering letter also referred to the partner's annual review of Mrs L's financial planning.

- The report recapped on Mrs L's existing finances as follows – there was £151,250 in the cash holding at the time; £200,000 had been invested in the recommended IB and its value was around £205,000 at the time; the ISA and UTFA had been invested in and their values were £10,353 and £72,715, respectively; and the shareholdings valued at £45,000 remained in place.

  [Around £40,000 had been used to purchase the INA, and the report noted that annual income of £7,008 was being derived from that.]

- It summarised her financial needs as follows – her annual care home costs were now £35,000 (with the average rate of annual fee increases being £2,808 at the time) and her total annual net income was £36,012.92; D considered that Mrs L could have additional annual expenditure of around £10,000 but it was not an objective to raise this specific level of added income, instead she sought a general increase of income where possible; investment of the £70,000 capital was to serve this purpose; Mrs L was drawing £5,000 annually from the IB at the time, she could have withdrawn up to £10,000 (the 5% allowance for the tax deferral benefit) but D preferred to raise income elsewhere and use the spare capacity in the IB for ad hoc withdrawals where necessary.

- SJP recommended that the £70,000 capital should be added to the existing IB as a top-up, the plan being to draw the full 5% allowance (£3,500 per year) from this top-up investment. It noted that D sought to preserve growth that had already been gained on the initial capital invested in the IB so she did not favour drawing the full 5% allowance in that respect, but she favoured doing so from the top-up investment. SJP noted that this plan did not fully resolve the additional annual expenditure D referred to but that could be addressed by taking additional withdrawals from the IB. It also noted that after the top-up investment, she would have £81,250 left in her cash holding, which was significantly more than the cash reserve she needed and which showed she had a capacity for loss that matched the top-up recommendation.

- The risk profile for this top-up investment in the IB was medium.

SJP's Suitability Report of 16 December 2013

- Referred to a financial planning meeting with D, for Mrs L's financial affairs, in September 2013. The main purpose of the report was the recommendation of a top-up investment into the UTFA. Capital of £50,000 had arisen in November 2013 from a matured fixed rate bond holding. This increased her cash holding and was to be used for the top-up. The objectives remained broadly the same as before. The report's covering letter referred to annual reviews of Mrs L's financial plan.

- Mrs L's assets at the time were as follows – £125,000 in the cash holding; the IB was worth £299,756; the ISA and UTFA were worth £36,615 and £58,760, respectively; and the shareholdings valued at £45,000 remained in place.

- Her financial needs were as follows – her annual care home costs were still £35,000 and her total annual net income was £39,948; D considered that Mrs L could have additional annual expenditure of around £8,500 but, again, it was not an objective to raise this specific level of added income, instead she sought a general increase of income where possible; she only took £8,500 (out of the 5% allowance of £13,500) from the IB but, again, D preferred to raise income elsewhere and use the IB's spare capacity for ad hoc withdrawals; D did not wish to purchase another annuity for Mrs L, as she found the process unduly intrusive; investment of the £50,000 capital was to serve the purpose of generating more income.

- Mrs L's ISA allowance for the year had been exhausted and an IB top-up was disfavoured. SJP recommended the £50,000 UTFA top-up, with the hope of yielding £1,900 per year returns.

- The remainder cash holding after the top-up investment would be £75,000, so this was more than enough for her emergency cash reserve needs and it showed she had the capacity for loss to match the recommendation. A medium risk profile was to be applied to this top-up investment.

Review Meetings

The November 2011 and January 2012 reports refer to meetings held with D in July and September that year, followed by the recommendations in the respective reports. SJP's Fact-Find ('FF') document of 8 November 2012 refers to reviews conducted for Mrs L's account on 25 April and 8 November that year. The 4 December 2012 report also refers to the meeting held with D on 8 November.

SJP's FF document of 12 September 2013 refers to a review meeting of the same date. The 16 December 2013 report refers to that meeting too.

SJP has shared with us copies of its internal system's records referring to review meetings conducted for Mrs Ls account on 19 November 2014 and 28 September 2015. It has also shared copies of the portfolio valuations produced for both meetings.

SJP has given us a copy of its partner's letter to D acknowledging a review meeting conducted on 18 October 2016 and a copy of the portfolio account statement produced for that meeting. It also notes that unfortunately Mrs L passed away in early 2017, so by May 2017 her portfolio had been liquidated as instructed by the estate (after a meeting with D in April 2017).

The estate's complaint

They say – Mrs L's estate was unsuitably advised to put too much money into investments; this meant the amount of her available capital exposed to investment risks was too high and disproportionate; her estate was also exposed to risks that were too high and that mismatched her inexperienced investor profile (with no prior knowledge and experience of stock market linked investments); and following the regulator's January 2013 Retail Distribution Review Mrs L paid SJP the OAC for the OAS to her estate but it may not have always provided that ongoing service (so, where the service provision cannot be evidenced, SJP should refund the associated OAC with interest).

SJP's position on the complaint

It says there is no merit in the part of the complaint about the OAS and OAC, because it has established evidence that it maintained ongoing contact with D and conducted reviews for the estate annually between 2012 and 2017.

With regards to the suitability of its recommendations in November 2011 (the IB, ISA and UTFA), January 2012 (the INA), December 2012 (the IB top-up) and December 2013 (the UTFA top-up) SJP initially asserted that they were all suitable for Mrs L's estate. However, following our investigator's views on the complaint, which I summarise next, it revised its position.

SJP mainly says –

- the November 2011 and January 2012 recommendations were suitable;
- they recommended a diversification of risks between the no risk INA, the low-medium risk ISA and UTFA and the medium risk IB;
- the recommendations also left Mrs L with a sizeable £159,000 on deposit;
- the INA was/is not an investment in the way the others were, it was a product purchased to provide Mrs L with guaranteed income (income that was not exposed to risks);
- from December 2012 onwards it was/is responsible only for the IB top-up and the UTFA top-up recommendations;
- at all times, it had no responsibility for and did not recommend the other components of Mrs L's estate (those being the shareholdings and the cash holding);
- after the November 2011 and January 2012 recommendations, there are grounds to say no further recommendations were needed, so the IB and UTFA top-ups were unnecessary;
- it could have advised the estate to address the additional income it sought by exhausting the full 5% withdrawal allowance for the IB (which was not being done) and by taking withdrawals from the £159,000 cash holding over time (at a withdrawal rate of £5,000 per year, the cash would have lasted at least 31 years, which was unlikely to be a concern given Mrs L's age at the time);
- any redress to the estate should be based on a low risk benchmark, because but for the top-up recommendations the money applied to those top-ups would probably have remained on deposit.

Our investigator's views on the complaint

One of our investigators looked into the complaint. He concluded that the part of it that alleges unsuitability of advice should be upheld, with specific regard to the top-up recommendations in December 2012 and December 2013. He did not consider that the initial advice from SJP was unsuitable, and he did not find evidence to say it had not delivered the OAS it received the OAC for.

The investigator considered that the result of SJP's initial advice (inclusive of the 50/50 split in the IB between its low-risk money market funds component and its medium risk component) was an estate portfolio with the following overall investment risk exposures – 57% cash and zero risk exposure, 16% low to medium risk exposure, and 27% medium risk exposure. He considered this to have been suitable for Mrs L's/the estate's profile, and he noted that the annual income shortfall, with regards to Mrs L's annual care home costs, was the estate's priority.

The investigator took the view that the December 2012 and December 2013 recommendations changed the portfolio by increasing its equity content and the risks it was exposed to.

He said – this was unsuitable and unnecessary; when added to the pre-existing shareholdings in the portfolio and the IB's move from a low/medium risk profile in 2011 to a medium risk profile in 2012 (with significantly more equity content in the latter), the additional IB top-up investment in 2012 meant around 60% of the overall portfolio was invested in the equity market; then the 2013 UTFA top-up investment resulted in further exposure to the equity market; there is evidence that the estate sought a low to medium risk profile for the portfolio (which is what led to the revision of the initial IB recommendation), so this overall level of equity exposure conflicted with that; the IB alone ended up with an 85% equity exposure; furthermore, the approach towards generating additional income should have involved a lower risk strategy; given her profile at the time Mrs L was not in a position to recover from or replace lost capital needed for her care expenses so this should have informed the lower risk approach; and even though the estate also sought longer term growth for its beneficiaries, in the future, the objectives related to Mrs L and her care expenses remained the priority, as was the low-medium risk approach associated with that.

The investigator recommended redress for the entire portfolio/all of its contents, covering the period between December 2012 and May 2017 (when the portfolio was liquidated), and he noted that the low to medium risk benchmark to be used for calculating redress might yield little to no redress given that the equity markets into which the portfolio was heavily invested had relatively strong performance during this period, so the portfolio's actual performance might have exceeded the redress benchmark performance. He was not persuaded by SJP's argument about limiting redress to the IB, ISA and UTFA it advised on, he considered that the portfolio should be treated as a whole, and he was not persuaded by its argument that a low-risk benchmark should be used for the calculation, given that the estate had a low to medium risk profile.

The matter was referred to an Ombudsman.

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 OAS and OAC</u>

The estate asserts that SJP received the OAC for the provision of the OAS. SJP does not dispute this, so I do not find it necessary to detail evidence confirming that the latter (service) to the estate was in place, for which SJP received the former (fee). The parties' dispute relates to the estate's claim that the OAS may not always have been provided as it should have been.

The OAS was/is about the annual review of the estate's portfolio. In some cases such reviews can be closely related to instances of 'new advice' provided by a firm to a client over time. The summary of events above shows that between 2011 and 2013 such new advice was provided by SJP to the estate three times – the initial advice between November 2011 and January 2012, then the top-up recommendations in December 2012 and December 2013. This is factual context for the service received by the estate during those years. It does not automatically mean that the OAS was compromised for the new advice events. Instead, the balance of evidence shows that both appear to have remained distinct, whilst also being closely related.

There is ample evidence of SJP's engagements with the estate in July, September and November 2011, leading to the suitability reports in July and November that year, and in January 2012. However, I appreciate that these meetings and engagements, and the financial planning services provided within them, were for SJP's initial advice. They were not part of the OAS. Nevertheless, SJP might say, as it appears to have done, that suitability reviews began in the lead up to its initial advice, and this evidence supports that.

As I said in the background section above, "*SJP's Fact-Find ('FF') document of 8 November 2012 refers to reviews conducted for Mrs L's account on 25 April and 8 November that year. The 4 December 2012 report also refers to the meeting held with D on 8 November*". That report serves as a form of record that the November review happened. I appreciate that the report was about new advice. However, that does not mean the review the month before was not the annual review that it was supposed to be. It happened in the anniversary month of the November 2011 advice, and the IB top-up recommendation in the following month appears to have resulted, at least in part, from a review of the portfolio since that 2011 advice. The FF also referred to an earlier review in April 2012.

With regards to 2013, as I also said above, "*SJP's FF document of 12 September 2013 refers to a review meeting of the same date. The 16 December 2013 report refers to that meeting too*". In this respect, the report also serves as a form of record that the September review happened. Again, the report was about new advice (the UTFA top-up) but SJP's review of the portfolio around three months earlier appears to have been sufficiently distinct, as part of the OAS and not as part of separate new advice. Like the correlation in the previous year, the September review seems to have led, at least in part, to the UTFA top-up recommendation in December.

I am satisfied with the evidence shared with us for the period between 2014 and 2017. SJP's system's records confirm that annual reviews were conducted in November 2014 and September 2015. I have seen the screenshots of these records and the portfolio asset valuations (produced, in each case, in the same respective month/year) used for the reviews in both years. I have also seen the portfolio's wealth account statement/report produced on 17 October 2016 for Mrs L ahead of the review meeting the following day (18 October), and SJP's letter to D the day thereafter (19 October) thanking her for attending the meeting.

Mrs L sadly passed away in early 2017, however I have seen evidence of engagements between SJP and D, including detailed advice correspondence, related to the estate's instruction to liquidate the portfolio. It therefore appears that a form of the OAS continued, after her passing, up to the point the portfolio was liquidated.

Overall, on balance and for the above reasons, I do not uphold the estate's allegation that SJP may not have delivered the OAS as it was paid to do, I am persuaded that it did.

<u>*Suitability of Advice*</u>

Mrs L's overall profile at the outset, including her personal circumstances, her finances and the priority attached to the need/objective to cover her care home expenses and wider expenditure, are as I summarised in the background section above. The same applies to the objectives conveyed by D to, and agreed with, SJP on her behalf. Though SJP was dealing with D, she was representing Mrs L. Therefore, SJP was advising Mrs L/her estate.

The laws and rules relevant to SJP's responsibilities towards Mr L and her estate are, in the main, those stated in the relevant parts of the regulator's *Handbook*. Its responsibilities to make suitable recommendations to clients like her and to abide by the 'client's best interests rule' by upholding her best interests at all relevant times are set out in the Conduct of Business Sourcebook ('COBS') section of the Handbook, at COBS 10 and COBS 2 respectively.

Furthermore, the Handbook's Principles for Businesses, at Principles 2 and 6, required that in the course of its advisory service to her/her estate SJP conducted itself with due skill, care and diligence, upheld her interests and treated her fairly. There is case law – Ouseley J, in R (British Bankers Association) v Financial Services Authority [2011] EWHC 999 (Admin) – that confirms The Principles are ever present requirements firms must comply with.

There are a number of key elements to consider in terms of suitability (or otherwise) of a recommended investment;

- An investor's profile at the time of the recommendation (mainly, his/her objective(s), risk profile, investment experience and affordability status (including capacity for loss)).

- Whether (or not), on balance, the investor's profile was properly determined between the investor and the adviser.

- Whether (or not), on balance, the adviser's recommendation was suitable for the investor's profile.

- Whether (or not), on balance, the investor was informed about and understood the nature of the recommendation and its risks.

Before addressing the recommendations made by SJP, I wish to make it clear that I have adopted the same approach taken by the investigator, in terms considering SJP responsible for advice on Mrs L's portfolio as a whole.

This approach is supported by the facts surrounding the advice SJP gave. The entire portfolio of assets was presented to it for its review and advice, and its advice addressed the entire portfolio. Its recommendations extended to the investment of money from the portfolio's cash holding, and it recommended liquidation of the portfolio's existing shareholdings. The former happened but the latter did not. Nevertheless, SJP's advice undertook the portfolio as a whole and I consider that these specific examples defeat its argument that the cash holding and shareholdings should be excluded from our consideration of the complaint.

The same approach applies to the INA. I understand SJP's points about the nature of this product and about how it was not exposed to investment risks in quite the same way the other products were. However, it was a part of the overall advisory and financial planning service it conducted for Mrs L's portfolio. It was a product with no surrender value and one that involved a capital outlay which, after six months, was irrecoverable, so in broad terms the idea was to take a chance that the total guaranteed income she would receive from it over time and until her passing would make the capital outlay worthwhile. In this context, suitability considerations apply to it, as a part of the overall portfolio, in the same way as they apply to the other components of the portfolio.

I am satisfied that Mrs L's profile was properly determined and understood between SJP and D. Notably, she was in her mid to late 80s and in a care home, and the priority for her was to ensure her finances comfortably catered for all her expenses at the time and for those in the foreseeable future.

I share the investigator's view on D's discussions with SJP about a secondary objective to pursue longer term growth in the portfolio in the interest of the estate's beneficiaries. I do not consider that this was viewed as a competing priority for Mrs L or for D at the time. It could not reasonably have been. Mrs L owned the portfolio/assets and she was SJP's client. Her needs could not reasonably have been unduly compromised in any way for the sake of serving the future interests of the estate's beneficiaries. I have not seen evidence that she or D permitted such an approach in the instructions given to SJP. Even if that was the case SJP was duty bound to uphold *her* best interests so it would have been expected to advise against an approach like that.

In simple terms, SJP faced, at the outset, a portfolio with a value of around £530,000 (over £400,000 of which was in cash), a negative difference of £15,000 to £20,000 per year between Mrs L's income and her expenditure (mainly her care home expenditure), and the immediate need to set up her portfolio to address this deficit at the time and into the foreseeable future.

The risk profile for the task appears to have been agreed, overall, as low to medium. As the investigator noted, the changes in approach in November 2011 (the lower amount invested in the IB and the lowering of its risk profile) shows that D favoured, on her mother's behalf, this low to medium risk profile for the portfolio, as opposed to the higher risk exposure inherent in the July 2011 recommendations. I agree. In the absence of any insistence from Mrs L, I do not consider that such higher risks in the portfolio could be justified for her and her circumstances as they were. She was already in retirement and in her elderly years, and she had a sizable amount of capital which, with suitable advice, could potentially cater for her future years in retirement without the need to undertake unduly high or higher risks.

Overall and on balance, I too find that the revised November 2011 recommendation and the associated January 2012 INA related recommendation were not unsuitable. The recommended portfolio, as executed, addressed the primary objective of generating additional income to cover the negative annual shortfall of around £20,000 between Mrs L's full annual expenses (of around £40,000) and the annual income she had at the time (almost £20,000). As described in the background section above, SJP's recommendation in November 2011, before the revision later that month, moved her into a position where she had surplus annual income. The revision later in that month appears to have reduced or erased that surplus, but capacity for income or drawings from the portfolio to cover Mrs L's annual expenses remained.

The state of the portfolio as a result of the revised November 2011 and January 2012 recommendations can be seen in the details for the INA and in the advice given by SJP in December 2012. The £45,000 cash holding remained, which, given its nature, can be viewed as having a medium risk profile. Around £40,000 was used to purchase the INA, which had no more than a low risk profile. There was a cash holding of over £150,000, which was either no risk or low risk, depending on whether (or not) inflation is taken into account. The ISA and UTFA were set up as low-medium risk investments, and a total of around £85,000 had been invested in them. £200,000 was invested in the IB, which started as a low-medium risk investment, gradually moving into a medium risk profile.

Overall and as result of the revised November 2011 and January 2012, the portfolio achieved the low to medium risk profile (even after the IB became a medium risk investment) that the estate sought, and it achieved the estate's objectives at the same time. SJP's advice in December 2012 confirmed the latter. Mrs L had annual income that met and exceeded her care home costs by around £1,000. She also had untapped capacity for further income/drawings from the IB to the value of £5,000, and she had a significant sum in cash. In other words, and aside from the cash holding, she had access to a total of around £6,000 in surplus income. Given the cumulative nature of the allowance for drawings from IBs, the unused parts of the 5% allowance could be carried forward, so if she did not need to exhaust that allowance each year she could have had access to potentially more/increasing surplus income in the future.

At the time of the December 2012 advice these state of affairs should have informed SJP that no further investment recommendation was necessary. I commend it for presently appreciating and conceding this. Its earlier advice had resolved the estate's objective and it had done so through a portfolio that matched the estate's profile – so the portfolio was not unsuitable and did not need to be changed.

If, as the December 2012 report states, D presented a desire to invest more capital and a reluctance to use the income capacity in the IB for her mother, it should have advised her that such a step was unnecessary and was not in her mother's, or the estate's, best interest. There was no need for additional risk exposure when the portfolio was already working to meet its objectives.

Any secondary objective of accumulating wealth in the portfolio in the interest of the estate's beneficiaries was arguably achievable in the portfolio as it was. The values in the ISA, UTFA, the shareholding and the cash holding – a total of around £280,000 – seemed likely to remain unused, given that the INA, drawings from the IB and Mrs L's other incomings were catering for her annual expenses. Without being insensitive, in light of her age at the time, it might also have been viewed as unlikely that the IB would be exhausted by the time the estate's beneficiaries' interests arose. If there was consideration of maximising growth in the portfolio, in the interest of the beneficiaries in the future, at any cost or at the expense of the primary objectives for Mrs L, then as I said earlier that could not reasonably have been viewed as a competing priority, and it would have been unsuitable.

I also do not consider that D/the estate was properly informed and understood the unnecessary risks being undertaken by following the December 2012 top-up recommendation, or that in December 2013. On balance, I consider that if they were so informed, especially about the fact that the additional risks did not need to be taken, it is more likely (than not) that they would have viewed the portfolio as achieving its purpose as it was. In addition to concluding that, other than the ongoing annual reviews, no new advice for the investment of new money was needed by the estate.

It stands to reason that the unsuitability of the December 2012 recommendation extends to the December 2013 recommendation, for the same core reasons given above.

Overall, on balance and for the reasons given above, I uphold the estate's complaint with regards to SJP's unsuitable recommendations for Mrs L's portfolio in December 2012 and December 2013.

Putting things right

fair compensation

In deciding what is fair compensation, my aim is to put the estate as close as I can to the position it would probably now be in if it had not been given unsuitable advice for its portfolio by SJP in December 2012 (and including its unsuitable advice in December 2013). I have explained, above, that the portfolio is to be approached as a whole, and I have given reasons for that. The same applies to redress for the portfolio.

I have also explained, above, the estate's low to medium risk profile. For the reasons I give further below, this profile has informed the redress benchmark that I have used in my redress provisions (also below).

I am not persuaded by SJP's argument about the redress benchmark. I understand its point about the investment top-up capital coming from cash that would probably otherwise have remained on deposit – hence its argument that a low risk benchmark related to cash on deposit should be used. However, I seek to redress the estate's portfolio as a whole, not the IB and UTFA in isolation. The portfolio was not in cash only, so I do not find that a cash deposit related benchmark, alone, is applicable or appropriate. Instead, I am satisfied that a benchmark reflecting the portfolio's low to medium profile is appropriate in the circumstances.

The natural start date for calculating redress for the estate is 4 December 2012, when SJP gave its unsuitable advice, and the natural end date for the calculation is the date on which the portfolio's assets ceased to be held after Mrs L's passing, and in the course of execution of her estate – available evidence suggests that this happened in May 2017.

The investigator's recommendation involved separate calculations for each of the portfolio's components. I have taken the same approach. This should aid a clear and simple calculation, especially in terms any difference in end dates for the portfolio's assets, and it still achieves redress for the portfolio as a whole.

I am satisfied that what I have set out below is fair given the estate's circumstances and profile at the time.

what must SJP do?

To compensate the estate fairly, SJP must:

- Compare the performance of "The Estate's Portfolio Investments" with that of the benchmark shown below and pay the estate the difference between the *fair value* and the *actual value*. If the *actual value* is greater than the *fair value*, no compensation is payable. If the *fair value* is greater than the *actual value* the difference is the compensation that is due to and must be paid to the estate. SJP must also pay interest as set out below.

- The components of "The Estate's Portfolio Investments" are the cash holding, the shareholdings, the INA, the IB, the ISA and the UTFA. The table below refers to "The Estate's Portfolio Investments", but SJP must conduct a separate redress calculation for each of its components.

- Provide the details of the calculations to the estate in a clear and simple format.

Income tax may be payable on any interest awarded.

Investment	status	Benchmark	from ("start date")	to ("end date")	additional interest

The Estate's Portfolio Investments	No longer exists	For half of the investment, the Bank of England average return from fixed rate bonds; and for the other half, the FTSE UK Private Investors Income Total Return Index (prior to 1 March 2017, the FTSE WMA Stock Market Income Total Return Index)	4 December 2012	Date on which the investment /asset ceased to be held.	8% simple per year on any loss from the end date to the date of settlement.

actual value

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

fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark. To arrive at the *fair value* when using the fixed rate bonds as the benchmark, SJP should use the monthly average rate for fixed rate bonds with 12 to 17 months maturity as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

Any withdrawal, income or other payment out of the investment should be deducted from the *fair value* at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there are a large number of regular payments, to keep calculations simpler, I will accept if SJP totals all of those payments and deducts that figure at the end instead of deducting periodically.

Any additional sum paid into the investment should be added to the fair value calculation from the point in time when it was actually paid in.

why is this remedy suitable?

I have decided on this method of compensation because:

- The estate had a low-medium risk profile, it wanted growth and income with a small risk to its capital.
- The average rate for fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to capital. The FTSE UK Private Investors Income Total Return Index is a mix of diversified indices representing different asset classes, mainly UK equities and government bonds, and would be a fair measure for someone who was prepared to take some risk to get a higher return.
- I consider that the estate was in between, in the sense that it was prepared to take a small level of risk to attain its objective. The 50/50 combination above would reasonably put it into that position and it broadly reflects the sort of return it could have obtained from a portfolio suited to its profile.
- The additional interest is for the estate being deprived of the use of any compensation money since the end date.

compensation limit

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £150,000, £160,000, £170,000, £190,000, £195,000, £350,000, £355,000, £375,000, £415,000 or £430,000 (depending on when the complaint event occurred and when the complaint was referred to us) plus any interest that I consider appropriate. If fair compensation exceeds the compensation limit the respondent firm may be asked to pay the balance. Payment of such balance is not part of my determination or award. It is not binding on the respondent firm and it is unlikely that a complainant can accept my decision and go to court to ask for such balance. A complainant may therefore want to consider getting independent legal advice in this respect before deciding whether to accept the decision.

In the estate's case, the complaint event occurred before 1 April 2019 and the complaint was referred to us after 1 April 2023 but before 1 April 2024, so the applicable compensation limit would be £190,000.

decision and award

I uphold the estate's complaint on the grounds stated above. Fair compensation should be calculated as I have also stated above. My decision is that SJP should pay the estate the amount produced by that calculation, up to the relevant maximum.

recommendation

If the amount produced by the calculation of fair compensation is more than the relevant maximum, I recommend that SJP pays the estate the balance. This recommendation is not part of my determination or award. SJP does not have to do what I recommend.

My final decision

For the reasons given above, I uphold the estate of Mrs L's complaint and I order St. James's Place Wealth Management Plc to carry out redress as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs L to accept or reject my decision before 27 November 2024.

Roy Kuku
Ombudsman