DRN-5036773

The complaint

Mr O complains St. James's Place Wealth Management Plc ('SJP') gave him unsuitable advice and failed to provide the ongoing advice service he paid for.

What happened

Mr O met with SJP several times across February and March 2018, with SJP making an investment recommendation to him on 21 March 2018.

SJP's recommendation was that Mr O invest £20,000 in a stocks and shares ISA and £80,000 in an Investment Bond. At total of £100,000 of the £250,000 in cash he held prior to the advice. It also recommended the ongoing advice service for an additional fee.

Prior to meeting with SJP, Mr O had moved across the country and intended to carry out home improvement works on his new him. More recently with those costs being higher than the money put aside for them causing him to withdraw large amount from his investments, some of which incurred him charges to do so. In 2024 he fully encashed them.

Given the investment hadn't worked out as he had expected because of his greater needs for cash than he thought the advice had considered, he complained to SJP through a representative. For ease I'll refer to the actions of his representatives as if they were Mr O's.

In his complaint to SJP, Mr O said it didn't provide the annual reviews he paid for and that the initial advice was unsuitable for him. He said he felt the advice was unsuitable because:

- He was elderly, vulnerable and where he was hard of hearing he wouldn't have understood what was being discussed.
- While Mr O's son was present during the advice that was only for support rather than financial literacy.
- He had no previous experience of risk based investments.
- At the time he was renovating his home and SJP didn't properly consider the impact of those expected costs on the advice given.
- Too much of his capital was invested, demonstrated by the withdrawals from his investments.
- It wasn't properly explained that income taken would erode the capital.
- There was no need to take any risk and the level of risk advised taken was too high for his age and needs.
- The losses from these investments caused his health to deteriorate.

SJP responded to Mr O's complaint agreeing that, apart from 2021, it hadn't provided him the reviews it should've but didn't agree the advice was unsuitable. To compensate him for those missed reviews, it offered him a total of £852.08 which included interest and £150 to reflect the inconvenience caused.

As Mr O remained unhappy with the advice and fees paid, he referred his complaint to our service.

One of our Investigators considered his complaint and upheld it in part. In summary, he said he thought the advice was suitable but as SJP hadn't sufficiently evidenced what service was provided to Mr O for the 2021 review, it should refund the fee for that year with interest in addition to the offer made so far. On the advice, he felt this was suitable because:

- Mr O had an objective to invest for and SJP met that in a reasonable manner.
- Age was considered and it wasn't unreasonable to advise Mr O to invest for the minimum term, and that he was noted as being in in excellent health for his age.
- Should Mr O have passed within that period, his investments could be inherited.
- Mr O had sought advice himself, contacting several firms prior to engaging with SJP.
- Home improvement costs were considered with £60,000 being marked for them.
- The level of risk recommended wasn't unreasonable given the objectives, spread of that risk and cash left on account.

In response to our Investigator, SJP explained it agreed with his recommendation. Mr O didn't and through his representative explained he still considered the advice to be unsuitable. He said:

- He wasn't in excellent health for his age as SJP had said, and provided medical testimony demonstrating he had previously suffered from a stroke, heart attack and other conditions.
- Due to his poor hearing it is difficult for him to understand normal conversation and so wouldn't have understood the advice.
- The adviser hasn't correctly documented Mr O's health conditions, and feels the adviser tried to avoid them.
- The figure allocated for home improvements was inaccurate as the total works cost around £200,000. Those costs came from the investments which he incurred charges to withdraw from.

Our Investigator considered those points but explained that he remained of the opinion the advice was suitable.

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.

SJP's initial advice

When SJP advised Mr O, it needed to ensure the investment recommendation it was making was suitable for him. And that it had taken sufficient information from him to be able to make such a recommendation. This is set out in the relevant rules within COBS 9A of the FCA Handbook. In making a suitable recommendation, these rules say SJP need to consider Mr O's knowledge and experience, objectives including risk and his circumstances.

During Mr O's meeting with SJP, it completed a 'fact-find' with him which documents the questions SJP asked, and the answers Mr O gave. This document asks many detailed questions about Mr O, and I'm satisfied from those that SJP took enough information from him to be able to provide him with suitable advice. Following the advice, SJP sent Mr O a suitability letter which set out and explained the recommendation it was making to him.

In summary, the fact-find and suitability letter set out the following important information about Mr O:

- He was 82 years old, retired and a non-tax payer.
- His pension and annuity income covered his expenses but left only left £16.05 for other expenses.
- Because of this, he was looking to invest cash he had on deposit to increase his income a capital and tax-efficient manner.
- He had reached out to several financial advisers to review his position before engaging SJP.
- He was in good health for his age and didn't specify that he was suffering from any medical conditions.
- Works were planned on his new home and these were expected to be around £60,000.
- He had no other planned future needs and had no existing liabilities.
- He was willing and able to take a 'medium' level of risk.

SJP's advice was to invest a total of £100,000 in model portfolios investing across diversified funds. £80,000 through an investment bond and £20,000 in an ISA. The aim of its advice was for Mr O to be able to draw an income of around £400 per month from these investments. The assets would aim to generate some capital growth to reduce the erosion from withdrawn income on his capital. I'm satisfied that approach was in line with Mr O's objectives given he had a need for additional income. While this could've been achieved through cash deposits, withdrawals would erode the capital potentially much more quickly than investing it, as doing so could in practice allow that money to grow reducing the impact of withdrawals. I don't agree then that Mr O had no objectives, he had a disposable income of £16.05 and had been shopping around financial advisers to advise him on increasing his income. And in my view, SJP addressed that need in its recommendation.

Mr O has said it wasn't clear to him that income taken from the investments would reduce his capital value. I considered this point but not seen that I agree. From the information SJP gave Mr O, I’m satisfied it clearly explained the risk of his capital value falling, and the extent of that would be based on how much his income exceeded the capital growth of his invested money.

The records from the advice show future flexibility and tax efficiency was also important to him. In my opinion the recommendation SJP made would provide that. I say this because the income and growth on the investments within his ISA would be tax free, and the tax from income from the bond would be deferred, which given his age and income requirements would likely cause this income to also be free of tax. Additionally, the investments were withdrawable, although the bond was subject to an early withdrawal fee if withdrawals above the annual allowance were taken. These investments could be reassigned to another in life or through his estate should he pass, giving the flexibility he sought.

It follows I’m satisfied SJP considered Mr O’s objectives and the recommendation made in my opinion met those in a suitable manner.

Turning to risk, SJP considered Mr O to be a ‘medium’ risk investor, which it described as someone who was ‘comfortable with most of your capital being invested in equities and property, some of it overseas. You realise there may be significant falls in the value of your investments’. I’ve not been provided with the risk questionnaire that led to that outcome, but I’m satisfied from the information available at the time of the advice SJP wasn’t advising Mr O to take more risk than I think he was comfortable with.

I say this because it is noted in the fact-find that Mr O told SJP he previously took a ‘medium’ level of risk with fund based investments. In my view he had some experience and familiarity with these assets and the level of risk SJP was recommending. Looking at how SJP was advising Mr O to invest, he had £250,000 in cash deposits which £80,000 would be invested against what SJP said to be a ‘medium’ level of risk, £20,000 at a lower-medium level of risk. This left £90,000 in cash deposits after taking into account the £60,000 reserved for his home improvements.

His overall portfolio then mostly held lower risk investments, with around 40% exposed to the medium level SJP advised Mr O was. These assets were diversified through funds and given 60% of his wealth was in lower and no risk assets and his previous experience of investing, I’m satisfied SJP fairly considered the risks involved and weren’t advising Mr O to take more risk that I think he would’ve understood or been comfortable with.

I’m also satisfied Mr O had the financial capacity to invest in this way. While his disposable income levels meant that he wouldn’t be able to replace this money, his plan in any event appears to have been to draw from this capital. Which in time would erode it, and as mentioned already, potentially doing so faster than if he invested it which aimed to mitigate the rate at which the capital reduced by investing for some growth.

Mr O’s main concerns about the advice he was given now are his age, 82 years old, and health, including his hearing, at the time of the advice. And the amount invested given the amount of money he needed to complete his home improvement works. I’ve considered both of these in the course of determining whether SJP’s advice was suitable. And having done so, I’m not persuaded either of these caused the advice to be unsuitable.

Age and vulnerabilities such as health are consideration firms must take into account when giving advice. From the evidence I’ve seen, in Mr O’s case I’m satisfied SJP did. I say this because SJP made some adjustments it says were due to his age which included the overall amount it recommended he retain as cash, which the recommendation made to Mr O was within. SJP’s recommendation did fairly in my view account for what might happen in the future, and I’m satisfied there was evidence of such discussions taking place around who may inherit them in the event of Mr O's passing. These investments recommended could in that event pass into the estate or be otherwise gifted, and I'm satisfied those discussions took place and that Mr O, and the person who would execute his estate, were satisfied with those discussions.

Turning to his health, Mr O has provided testimony setting out his medical history, this includes temporary amnesia in 2000, a heart attack in 2006, severe hearing problems and a number of other conditions which required treatment. When SJP asked Mr O about his health, the fact-find and suitability letter evidence that Mr O hadn't declared any of these issues, or any other, to SJP. The questions related to health were answered as him having no significant health issues and comment being made that he was in excellent or good health for his age. I'm satisfied SJP gave Mr O ample opportunity to raise any health issues he considered important for SJP to know about when advising him. And I've not seen anything to suggest that SJP ought to have given more consideration to his health than it did.

I understand Mr O's concerns that he feels the adviser was evading the issues of health, but I'm not persuaded SJP did. There were opportunities to provide health information, as set out above, or question what SJP had understood Mr O to have said. I say this because as mentioned SJP asked questions about health and because it also wrote to Mr O afterwards to explain its advice, which included what it understood about his health. I've not seen evidence those were challenged at the time, either by Mr O or his son who was in attendance. While I've not seen SJP knew about Mr O's hearing, if it was apparent I'm satisfied Mr O through the attendance of, and SJP's discussions with, his son along with SJP's written explanation of the advice sent afterwards could've been reasonably understood by Mr O. In my view then, SJP had fairly considered Mr O's health in the course of its advice.

In a similar manner relating to the costs for Mr O's planned home improvements, SJP recorded that Mr O told it those were expecting to cost £60,000. I'm satisfied then SJP asked about the expected costs and gave its advice based on the information it was given about the projected costs of £60,000, which it would be entitled to rely on. The advice catered for that need and set aside sufficient cash to meet the projected cost it was told. I understand Mr O says these costs ended up costing around £200,000. But given SJP acted on the figure of £60,000 it was told, I'm not persuaded SJP didn't fairly take into account Mr O's home improvement costs. SJP can't reasonably know more about these costs than the information it is given, and I'm satisfied it reasonably took that into account.

Mr O says he withdrew from his investments because he needed that additional money to pay for his home improvement, and incurred fees to do so. I've considered what SJP told him about early withdrawal fees, which in his circumstances would only relate to withdrawals from the investment bond. The product illustration for this bond does explain withdrawals above the 5% annual allowance would incur an early withdrawal fee within the first six years – on a reducing sliding scale. Given SJP was advising Mr O to invest for at least that period and as it clearly and fairly disclosed the early withdrawal fees, I'm not persuaded SJP has treated Mr O unfairly by him incurring charges to withdraw and later encash that investment.

It follows then I'm satisfied the advice SJP gave Mr O was suitable.

<u>Provision of the ongoing advice service</u>

Mr O took up SJP on its ongoing advice service, which he told SJP he had a similar arrangement before with his previous investments. The suitability letter evidences SJP recommended this service which would include an annual review, access to an adviser by phone and investment related communications.

When SJP considered Mr O's complaint it agreed it failed to provide these services he had paid for between 2019 and 2023 inclusive, apart from 2021 which it says went ahead.

Given SJP contracted with Mr O to provide those services in return for an annual fee and didn't provide the services for those years, I don't think SJP can fairly charge him for the years where the reviews didn't take place. SJP has already offered to do that along with 8% simple interest, which is in line with what I would expect it to do here. As there's nothing more I would direct SJP to do here, I won't comment on those years further.

For 2021 however, I've not seen enough evidence to satisfy me the level of service SJP provided Mr O was fair in return for the fee he paid. While SJP's evidence suggests an annual review took place, it's not clear what was discussed with Mr O and whether that amounted to a full review which the ongoing advice fee would be fairly chargeable. I say this because SJP has provided a screenshot of its system showing a call took place but hasn't been able to provide copies of the notes or review documents, which the call system notes say were updated. Given that was around four years ago, it isn't reasonable that information isn't available and so I can't fairly say SJP provided the services Mr O has paid for in that year.

Given SJP can't sufficiently evidence a reasonable level of service was provided for the fee it charged, it wouldn't in my view be fair for it to have charged Mr O the ongoing advice fee for 2021, along with the years SJP has already offered.

<u>Summary</u>

I understand Mr O's strength of feeling about why he feels the advice was unsuitable and I'd like to assure him I have carefully considered his arguments. But for the reasons explained above, I can't fairly say the advice SJP gave him was unsuitable. However, I do agree that SJP hasn't properly provided the ongoing advice services Mr O was paying for, which SJP will need to compensate him for.

In making its offer to Mr O, SJP included £150 to reflect the distress and inconvenience caused. As I've not seen the impact on Mr O amounted to more than frustration and worry his investments hadn't been reviewed, I'm satisfied SJP's offer already fairly reflects the impact that had on him. While he withdrew from the investment early, on balance I think that was due more to concerns around the initial advice and his need for capital than worry or concern caused by his investments not being managed in the way SJP said it would. I'm satisfied then £150 fairly reflects the inconvenience caused to Mr O.

Putting things right

In putting things, I direct St. James's Place Wealth Management Plc to:

- Reimburse to Mr O the fees paid for SJP's ongoing advice service paid for the years 2019 to 2023 – inclusive.

- Pay Mr O 8% simple interest from the date each fee was charged until the date of this decision.

- Pay Mr O £150 to compensate him for the inconvenience caused.

My final decision

For the reasons given above my final decision is that I uphold this complaint and direct St. James's Place Wealth Management Plc to settle the complaint as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 10 April 2025.

Ken Roberts
Ombudsman