DRN-5128121

The complaint

Mr B has complained that St. James's Place Wealth Management Plc gave him unsuitable advice about his pension.

What happened

I issued my provisional decision on this complaint on 11 October 2024. The background and circumstances to the complaint and the reasons why I was provisionally minded to uphold it were set out in that decision. I've copied the relevant parts of it below, and it forms part of this final decision.

Copy of provisional decision

Mr B's complaint was considered by one of our investigators. He sent his assessment of it to both parties on 3 November 2023. The background and circumstances to the complaint were set out in his assessment. But in brief, Mr B already had a pension held with St. James's Place. In 2021 he was advised to take his tax-free cash and go into a drawdown arrangement taking income withdrawals of £9,000 gross a year to cover more luxury discretionary spending (the pension's value was approximately £132,000 at that time). He'd also been advised to switch his funds from the Managed Funds Portfolio to the Strategic Growth Portfolio.

Mr B was subsequently advised to invest in an ISA (in 2022). When considering that advice Mr B became concerned about the fees and their impact on the likely returns achievable. He cancelled the ISA application. And subsequently, with the help of a representative, complained about the advice he'd been given about his pension.

St. James's Place said it thought that the advice Mr B had been given about his pension was suitable. It said there had been discussions around Mr B's tax-free cash and income requirements. And his attitude to risk had been discussed and recorded as medium. It said it had been agreed Mr B would switch funds from the Managed Funds Portfolio to the Strategic Growth Portfolio because of 'higher equity' content – with the potential for greater capital growth while remaining in a medium risk portfolio.

Our investigator didn't recommend that the complaint should be upheld. He said, in brief, that he thought a detailed analysis of both current and future income/expenditure had been carried out. And due regard had been given to guaranteed sources of income and how any shortfalls could be potentially avoided by reducing expenditure.

The investigator thought where circumstances allowed, the enjoyment of retirement by having luxury holidays and traveling were valid reasons for Mr B to enter a drawdown arrangement, use tax-free cash and ultimately supplement his income. The investigator also thought the level of risk presented by the Strategic Growth Portfolio was in line with Mr B's recorded risk profile of medium.

Mr B's representative had raised a number of concerns about the fees and charges. However the investigator went into detail about the firm's records and procedures and when *information was loaded into its systems. The investigator thought the charges had been illustrated and confirmed to Mr B.*

Overall, the investigator thought St. James's Place had acted appropriately and provided Mr B with sufficient information that took into account his full circumstances and objectives.

Mr B's representative didn't agree with the investigator's findings. The complaint was therefore passed to me to consider.

I e-mailed St. James's Place on 16 September 2024 to say that my initial thoughts were that the advice Mr B had been given wasn't suitable. I said, in summary, that the suitability report had indicated that Mr B would deplete his funds by the age of 72 (at the mid-growth rate). And that I understood this figure was derived from the Long-Term Income Calculator (LTIC). However I noted the illustration had said the fund would be depleted at age 78 (at mid growth). I said it wasn't entirely clear to me whether the assumptions behind the LTIC and the illustration were consistent, as the LTIC for example assumed a 2% annual increase in withdrawals. However I said it appeared the LTIC used an incorrect date of birth for Mr B, and so this would likely explain the significant difference in the figures provided.

I said I didn't think this in itself would have caused Mr B into making a different decision if, in reality, the fund would have been depleted at the later age of 78 rather than 72. However I said the inconsistency didn't appear to have been identified by the adviser about a key aspect of the advice. I said the illustration appeared to show that if the mid-rate of return was achieved then the expected actual return was only 0.2% a year after all charges were taken into account. And adding up the intended withdrawals, the total amount paid out would be around what was invested. However I noted the figures were in 'today's prices', so had been adjusted to take inflation into account, and the actual amount paid would have been higher. But I said I thought the figures ought to have prompted the adviser to take a closer look at the transaction to see if it was actually a reasonable financial proposition for Mr B.

Mr B was agreeing to accept a medium degree of risk. I said that needed to provide a worthwhile return in order to make taking that risk worthwhile. And if, at the outset, it appeared that if the mid-rate of return was achieved this would provide negligible returns because of the impact of all the associated charges, then the risks outweighed the rewards, and the recommendation wouldn't have been suitable. I said on the face of it, I didn't think the risks outweighed the rewards.

I also said Mr B had been invested in the Managed Funds Portfolio but had been advised to switch to the Strategic Growth Portfolio because of the 'higher equity' content – with the potential for greater capital growth while remaining in a medium risk portfolio. I noted Mr B was in his mid-sixties, and taking the benefits from his pension. Mr B's pension with St James's Place made up a significant part of his pension provision. He had another private pension that provided a guaranteed pension each year of approximately £2,000. And his State pension of approximately £10,000. So without this pension his provision was modest - £12,000 including the State pension.

Mrs B's retirement age was four years away. At retirement she had a defined benefit pension of around £8,000. And her State pension. It was recorded that their expected total guaranteed income when they were both retired would be approximately £30,400. And their total essential and standard expenditure was £30,000 – requiring a gross income of around £35,000 (between them). The suitability letter recorded that if Mr and Mrs B had insufficient guaranteed income to cover their expenditure once Mrs B retired "…you have confirmed you could sufficiently reduce your household expenditure by approximately £5,000 per annum, for example, by relying on one car only, being more mindful with food shopping, by cancelling some subscriptions, and/ or reducing social spending."

The suitability letter said Mr and Mrs B had confirmed that they weren't relying on the pension to cover any of their essential or standard discretionary spending through their retirement. But I said I didn't think this was strictly the case as they had said they would have to make changes without the additional £5,000 income – which Mr B's pension could have helped provide. However I said I accepted it was a choice for Mr B to weigh up whether he wanted to use his pension for 'luxury' expenditure in the shorter term, rather than use it to ensure he maintained his current lifestyle. Mr and Mrs B also had around £120,000 in savings – albeit I understood the majority was earmarked to purchase a holiday home.

I said Mr B's own pension provision was fairly modest. Mr and Mrs B had enough pension provision between them to cover the majority of their needs. But although Mr B may have decided to utilise his pension for more 'luxury' spending in the shorter term, I didn't think he was in a position to take unnecessary risks.

I said it was the adviser's role to weigh up all the different factors and provide suitable advice. My understanding was that it was the adviser who had earlier recommended that Mr B switch from the Managed Funds Portfolio to the Strategic Growth Portfolio. I said whilst the Strategic Growth Portfolio may have been rated as medium risk, it had over 70% in equities, the vast majority being international equities - only around 5% was in UK equities. I said it had approximately 10% more equity content than the Managed Funds Portfolio that Mr B had been in, and switching increased the degree of risk that Mr B was exposed to.

It was noted that the Managed Funds Portfolio "…had performed well over the years." I said given Mr B's age and in the context of all his circumstances, I didn't see any good reason to advise him to switch to a fund presenting more risk. However I said that equities had performed well more recently, and if Mr B still remained in the same fund he may well be better off now than he would have been had he remained in the Managed Funds Portfolio. I said overall however, I wasn't persuaded that the advice given to Mr B was suitable.

St. James's Place responded to say, in summary, that the LTIC included indexation, whereas the Illustration didn't reflect any increases. It also said its internal guidance at the time the advice was given was to use the spouse's date of birth on the LTIC where the spouse was younger than the client, and so it was Mrs B's date of birth quoted on the LTIC.

It said it thought Mr B was sufficiently knowledgeable to understand the inherent risks associated with his investment, and was likely fully conversant with the level of equity content within his holding. It said the investment was classed as offering a medium risk, which matched Mr B's stated attitude to investment risk and was consistent with his circumstances and experience. It also said the Managed Funds Portfolio had a higher equity holding when it was first introduced and wasn't comparable to the current portfolio holding. It provided an illustration for the period of 1 January 2020 to 31 December 2020 which showed the fund had an 84% equity holding. It said Mr B moving to the Strategic Growth fund a year later resulted in the equity holding going down to 72%.

What I've provisionally decided – and why

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

Mr B's representative provided further evidence and arguments in responding to the investigator's assessment of the complaint. I've considered all what's been said. Some of my findings are different to the investigator's, and Mr B, his representative and St. James's Place have another opportunity to provide further evidence in light of my provisional findings. So I'll only comment on what's been said before where I think it's appropriate to do so.

For the reasons outlined by the investigator, I think the fees and charges were likely disclosed to Mr B. St. James's Place has given an explanation for the differences in the information it provided about the age funds would run out. I was wrong about the adviser getting Mr B's date of birth wrong on the LTIC – St James's Place has said its policy was to use the spouse's date of birth in the LTIC where they were younger. I do think providing different information using different underlying assumptions makes it more likely there could be misunderstandings. However as I said, I don't think the difference in the information given about the age at which the fund would be depleted (assuming the £9,000 a year withdrawals) was material here in any event.

I do think, however, that on the face of it, the charges appeared to have a significant impact on the potential returns. The illustration said the reduction in yield assuming the mid-rate of return and taking all the charges into account was 2.4%. This would have been a significant drag on performance. It said the expected return was only 0.2% a year. I accept this was in today's prices. But if this level of return was expected on the basis of the mid-growth rate being achieved, I don't think the risks were worthwhile given the potential very modest rewards.

St James's Place has said the Managed Funds Portfolio had a higher equity holding when it was first introduced and wasn't comparable to the current portfolio holding. And said on moving to the Strategic Growth fund Mr B's equity holding went down to 72% - about a 10% reduction.

I don't think this is consistent with what the adviser said at the time – how Mr B rebalanced to increase the equity content if the equity content went down from 84% in the Managed Funds Portfolio to 72% in the Strategic Growth Portfolio. The adviser said:

"You have previously rebalanced your Retirement Account into the above portfolio because it covered your requirement to increase the level of equity investment for maximum capital growth – it has over 70% in equities compared to approximately 50% for the Balanced Portfolio and approximately 62% for the Managed Funds Portfolio. You wish to continue investing as per the existing selection."

I'm not sure if the equity content of the Managed Fund had reduced to 62% by the time that the advice was given here – June 2021. However whichever was the correct position, ultimately, the adviser had a responsibility to ensure the risks presented by the fund were suitable for Mr B in his particular circumstances.

Mr B was in his mid-sixties and taking his main private pension provision. As well as the pension with St. James's Place he had his State pension, and small other pension of £2,000 a year. So fairly modest provision.

Mrs B had her State pension and a guaranteed pension at retirement of around £8,000. Although they had the majority of their essential and standard expenditure covered when they were both due to retire, they did have a slight shortfall. It was recorded that Mr B had said when he and his wife had both retired they could reduce their expenditure to fall within their guaranteed income, and they weren't relying on the St James's Place pension for essential expenditure. So I accept they were in a position to 'cope' without the St James's Place pension. But I think this has to be considered in the appropriate context.

Mr and Mrs B hadn't accumulated such an amount of wealth that the St. James's Place pension was effectively of little importance. It made up a significant part of their pension provision. In my view the recommendation to invest in a fund with over 70% in equities, and the majority of those equities being international equities, put the pension at significant risk. I think it presented a greater degree of risk than was suitable for Mr B's particular *circumstances. And it put Mr B into a situation he didn't need to be in. Mr B could have achieved his aims by taking a lower level of risk than presented by the Strategic Growth Portfolio, but still aligned to his medium risk profile.*

I appreciate that Mr B had already been invested with St. James's Place and so had experience of investment in its funds. However I note that in the adviser's discussion with Mr B dated 28 April 2001 the adviser, when talking about the £9,000 year income withdrawal rate, said "We discussed the impact that this could have on his account should the growth not maintain 9% a year and he is happy to continue as he may choose to lower this in the future…". This implies that this was the kind of return that Mr B had experienced. And in saying "…should the growth not maintain 9% a year" suggests Mr B was given the impression there was a reasonable possibility it would continue going forward.

Mr B's representative has said the adviser was always very positive about the market and never discussed the potential of a market crash. I think the above does appear to be consistent with the adviser being very positive. And in my opinion it was extremely unlikely a 9% return per year would be achieved over the medium to long term. I think the adviser had a responsibility to alert Mr B that this was unrealistic, and set out more realistic expectations, including after taking the charges into account.

I recognise that Mr B was likely given the illustration which said when all charges were taken into account the expected return was 0.2%. Mr B's representative has said the charges weren't clearly communicated. Clearly I can't say with any degree of certainty in what detail the figures in the illustration were discussed, or what context was given to the 0.2% return. However I note that Mr B decided not to proceed with the recommendation for the ISA a few months later when his representative alerted him to what he was likely to get out of it after taking all charges into account. Mr B wrote to the adviser at that time saying:

"…having sat down and gone through the paperwork after and reviewing the figures provided in detail, we feel it isn't the right investment choice for us.

The projections show that if the market performed as per the analysis provided, that we wouldn't see any profit until year 3 and the £500 shown works out to a 2.5% return in 3 years as the high costs absorb the profits. We hadn't appreciated this when you presented the documents in the meeting."

My understanding is that Mr B was prompted to re-examine the ISA paperwork by his representative. And having done so clearly didn't think the return offered made the transaction worthwhile. So I think this is consistent with him not going ahead with the pension recommendation if he'd understood the types of return that might be achieved through it.

However, ultimately, it was for the adviser to take all the different factors into account and provide advice that was suitable for Mr B's particular objectives and circumstances. As I've said, on the face of it, only around a 0.2% return was expected on the basis of the mid-growth rate being achieved, I don't think the risks were worthwhile given the potential very modest reward. And I don't think the level of risk presented by the Strategic Growth Portfolio was aligned to the medium degree of risk that was aligned to Mr B's particular circumstances. In my opinion a fund with over 70% in equities, almost entirely in international equities, presented too great a risk.

Accordingly, I think Mr B's complaint should succeed.

Putting things right

I've carefully considered what is fair compensation in the particular circumstances here. My aim is that Mr B should be put as closely as possible into the position he would probably now be in if he'd been given suitable advice.

Mr B's pension was already held with St. James's Place. So I appreciate that St. James's Place wouldn't want to lose an existing client. However it's not clear to me whether it had another appropriate product that was suitable for Mr B's needs, or was able to structure the transaction such that, when taking all the charges into account, it made the transaction worthwhile in terms of the potential likely return given the degree of risk taken.

However, as I have said, I don't think the fund was suitable. And I think with suitable advice Mr B would have invested differently. If St. James's Place didn't have an appropriate product that might have been arranged through another adviser/provider. I accept that a transfer elsewhere may have incurred Early Withdrawal Charges on at least some of the transfer value. However my understanding is that the majority of the pension wasn't subject to these charges.

In the circumstances, it's not possible to say precisely what he would have done. But I'm satisfied that what I've set out below is fair and reasonable given Mr B's circumstances and objectives when he invested.

What must St. James's Place Wealth Management Plc do?

To compensate Mr B fairly, St. James's Place Wealth Management Plc should:

- *Compare the performance of Mr B's investment with that of the benchmark shown below. If the actual value is greater than the fair value, no compensation is payable. If the fair value is greater than the actual value there is a loss and compensation is payable.*

- *St. James's Place should also add any interest set out below to the compensation payable.*

- *If there is a loss, St. James's Place should pay into Mr B's pension plan to increase its value by the amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.*

- *If St. James's Place is unable to pay the compensation into Mr B's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore, the compensation should be reduced to notionally allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr B won't be able to reclaim any of the reduction after compensation is paid.*
- *The notional allowance should be calculated using Mr B's actual marginal rate of tax. It's reasonable to assume that Mr B is likely to be a basic rate taxpayer so the reduction would equal 20%. However, if Mr B could have taken any tax-free cash the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.*

- *If either St. James's Place or Mr B dispute that this is a reasonable assumption, they must let us know so that the assumption can be clarified. It won't be possible to* *amend this assumption once a final decision has been issued on the complaint.*

Income tax may be payable on any interest paid. If St. James's Place deducts income tax from the interest, it should tell Mr B how much has been taken off. St. James's Place should give Mr B a tax deduction certificate in respect of interest if Mr B asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

investment	*Benchmark*	*from ("start date")*	*to ("end date")*	*additional interest*
The pension	*FTSE UK Private Investors Income Total Return Index;*	*Date Mr B switched to the Strategic Growth Portfolio*	*Date of a final decision*	*8% simple a year from date of this final decision to date of settlement if settlement isn't made within 28 days of St James's Place being notified of Mr B's acceptance of this decision*

Actual value

This means the actual amount payable 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.

Any additional sum that Mr B paid into the investment should be added to the fair value calculation at the point it was actually paid in. Any withdrawal from the portfolio 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 are a large number of regular payments, to keep calculations simpler, I'll accept if St. James's Place 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?

I've chosen this method of compensation because:

- *I think calculating a value using a benchmark as a proxy for what Mr B might have received in a suitable pension and fund from the time he was advised to switch to the Strategic Growth Portfolio provides a pragmatic way to calculate fair compensation in the particular circumstances here.*

- *Mr B wanted capital growth and was willing to accept some risk to his 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 made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's 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 Mr B's circumstances and risk attitude.*

I also intend that St. James's Place Wealth Management Plc should pay Mr B £300 compensation for the distress he suffered as a result of the fall in the value of his pension, and the inconvenience caused by the matter.

My provisional decision

My provisional decision is that I uphold Mr B's complaint.

I intend to order that St. James's Place Wealth Management Plc calculate and pay compensation to Mr B as I have outlined under 'Putting things right' above.

I asked Mr B/his representative and St. James's Place Wealth Management Plc to let me have any further evidence or arguments that they wanted me to consider before I made my final decision.

St. James's Place said, in summary, that Attitude to risk guide provided at the time of the advice provided a definition of a medium attitude to which clearly explained the nature of it and that there could be significant falls in the value of his investment. It said the Strategic Growth Portfolio was, and still is defined as offering a medium risk. It thought the crux of the matter was that I was challenging the risk category of the Strategic Growth Portfolio.

St. James's Place said it was worth noting that different people in the industry defined risk differently. It referred to some research that concluded risk profiling tool providers were 'all over the place' and inconsistent with their risk category bandings. It said the key was ensuring client understanding of what their chosen definition was, which was covered in the Suitability Letter and Risk and Reward brochure provided at the time of the advice. St James's Place said I had accepted that Mr B was accepting a medium risk investment. The objective of Strategic Growth was:

"the portfolio seeks to provide capital growth over the medium to long term. It invests primarily in a wide range of global equities, but will also hold fixed interest and cash assets, and is spread across a wide number of managers each with a different investment style. The broad spread of different assets and different investment managers helps to reduce risk, but there may be significant fluctuations in value, particularly over the shorter term".

St. James's Place said when risk rating the portfolios it was worth considering them across a range of potential outcomes. It said the 'medium risk' category encapsulated a large number of portfolios. And that looking at Global Financial Data from 1925-2020, there wasn't a great deal of variability between a 60% and 80% portfolio over a 5-year period. It provided data showing returns over a rolling five year period between 1925 and 2020 which showed the worst return for 60% equity/40% bond at -17%, and that for an 80% equity/20% bond it was -23%. It said it wasn't just the equity content that determined risk, it was also the composition of the portfolio and the potential range of outcomes over a five-year period. St. James's

Place said it thought the Strategic Growth Portfolio was correctly categorised as offering medium risk, and was therefore in line with Mr B's medium risk profile.

Mr B's representative said, in summary, that she thought Mr B and Mrs B had only been given a brief summary document at their meeting with the adviser which had missed out crucial information. She asked about advice fees that Mr B had paid during the period that this complaint had been ongoing. And also about whether fees would be charged if Mr B moved away from St. James's Place as they had lost trust in the firm.

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 seen no reason to depart from the findings set out in my provisional decision copied above, to uphold Mr B's complaint.

Firstly, as I explained in my provisional decision, in my opinion the transaction needed to be a reasonable financial proposition. By agreeing to accept a medium degree of risk this needed to provide sufficient a return to make taking that risk worthwhile. I explained it appeared from the information provided that if the mid-rate of return was achieved this would provide negligible returns because of the impact of all the associated charges. St James's Place hasn't provided any further evidence to persuade me that this wasn't the case. So for the reasons I explained, in my opinion the risks far outweighed the very limited likely rewards, and the transaction wasn't a worthwhile financial proposition.

St James's Place has said it thinks the crux of the matter is that I didn't think the Strategic Growth Portfolio was correctly rated as medium risk. To clarify, that isn't my view. My view is that the degree of risk presented by the Strategic Growth Portfolio wasn't aligned to the degree of risk appropriate for *Mr B's particular circumstances.*

St. James's Place has said there wasn't a great deal of variability between a 60% and 80% equity portfolio over a 5-year period. The figures it provided showed a 6% difference in worst outcomes. I think different studies/data will provide different results, but I think the point is that a lower equity/higher bond content *generally speaking* presents less risk.

As St. James's Place has said, different people in the industry define risk differently. Different funds within any particular risk category may – to a reasonable degree - have differing levels of equities/bonds/other asset classes. I agree that it's the overall composition that should be considered. But they provide different levels of risk – albeit may broadly be within the same overall risk rating.

In my experience some 'medium' risk rated funds have around 45-50% equity content. St James's Place appears to have had a medium risk rated fund with similar equity content itself. But that's materially different to the 70-75% equity content in the Strategic Growth Portfolio, which was predominantly international equities and presented significant risks. I think it follows that some medium risk rated funds will be at the lower risk end of the particular risk category, and others at the higher. So I don't think a risk rating should be looked at in isolation. And I think the level of risk a fund presents should be considered in the context of the client's particular circumstances, given the impact of any losses will differ between clients.

As I explained in my provisional decision, Mr B was in his mid-sixties, the pension made up a significant part of Mr and Mrs B's pension provision, and they had fairly modest provision overall. Whilst I accept that they could 'cope' with losses to the St. James's Place' pension by reducing their standard and essential expenditure, I think they would clearly prefer to avoid that position if there were reasonable options to do so. As I said, the Strategic Growth Portfolio was invested over 70% in equities, the majority of those equities being international equities, which put the pension at significant risk. It put Mr B into a situation he didn't need to be in. I think it presented a greater degree of risk than was suitable for Mr B's *particular circumstances*.

For the reasons explained above and in my provisional decision, in my opinion the recommendation didn't provide a worthwhile financial proposition in any event given the impact of all the associated charges on the potential returns. And taking all the above into account, I haven't been persuaded that the advice was suitable in the particular circumstances of the case.

The concerns raised by Mr B's representative about the fees paid during the period that this complaint has been ongoing has been investigated by St. James's Place separately. If Mr B doesn't agree with its findings and is unable to resolve the matter he can refer it to us. But it hasn't been considered as part of this decision.

If Mr B wants to move away from St James's Place there may be charges incurred in doing so. But these charges don't flow from the advice Mr B was given in 2021. Mr B was an existing customer, and any early withdrawal charges would have been applied if he had moved away from St James's Place in 2021, on at least some of the transfer value. My understanding is that the majority of the pension wasn't subject to these charges in 2021, and any impact (if any) would be further reduced now as the charges fall over time.

final decision

My final decision is that I uphold Mr B's complaint.

I order St. James's Place Wealth Management Plc to calculate and pay compensation to Mr B as outlined under *'Putting things right'* in the provisional decision set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 6 December 2024.

David Ashley
Ombudsman