

## The complaint

Mr J complains that investment advice provided to him by St. James's Place Wealth Management Plc ("SJP") was unnecessary and unsuitable. Further, SJP then failed to provide the annual reviews for which it had deducted ongoing advice charges (OAC).

He's represented in bring his complaint by a claims management company (CMC). He was advised alongside his wife, who's brought a similar complaint, which has been dealt with separately.

## What happened

Around September 2014, Mr J received advice to transfer his existing stocks and shares ISA from another provider to SJP.

As part of the advice process SJP recorded that Mr J was in his 50s, working full-time with a mortgage and some other unsecured debt, some of which he planned to repay. He also owned some land abroad that was up for sale. His existing ISA that he'd held since 2009 had a balance of around £10,600 and it was noted that he was unhappy with the service he was receiving from his existing provider. He wanted to ensure that his money was managed in line with his attitude to risk (ATR), which he felt couldn't be done without an adviser, which his existing provider no longer offered.

SJP recommended he transfer the balance of his ISA to SJP and redirect his ongoing monthly regular contributions of £200. It was confirmed he was a medium risk investor with an objective of capital growth over the medium to long term. The lump sum would be invested in a 'balanced' portfolio of 10 funds consistent with his medium ATR. It was agreed the monthly contributions would be invested in the slightly higher risk 'Managed' portfolio. He was provided with a comparison of services and charges between SJP and his existing provider and it was explained that the investment would be reviewed regularly, at an ongoing cost of 0.5% taken monthly.

Shortly after, in October 2014, SJP recommended Mr J increase his monthly contributions to £500, invested in the same way as the earlier recommendation. The monthly contributions ceased a few years later and the ISA was then fully surrendered in June 2019.

A complaint, as set out above, was made to SJP by Mr J's CMC in May 2024 and referred to this service in August 2024 when no response was forthcoming.

An investigator considered the merits of the complaint and in respect of the suitability of the advice, said, in brief -

- Although the costs associated with the SJP ISA exceeded those of the existing provider, that didn't necessarily make the recommendation to transfer unsuitable.
- Mr J had indicated a desire to transfer as his existing provider no longer offered the advice service he required. He wanted to ensure his investment remained consistent with his attitude to risk.
- His existing ISA had been invested at a higher level of risk than the medium level agreed with SJP, which appeared to be suitable for his circumstances and objectives

at the time of the advice.

- SJP couldn't recommend switching funds with the existing provider so had to recommend a transfer to be able to monitor and choose funds in line with Mr J's attitude to risk. The additional cost of the SJP ISA of 0.77% per annum seemed reasonable for this type of service when considered against what a financial adviser might charge when looking at the whole marketplace.
- Although the investigator would usually have considered the performance of the ceding and recommended plans, in this case it wasn't relevant as the existing ISA had been higher risk, so not consistent with Mr J's medium ATR.
- In respect of increasing the contributions to £500 per month, at the time Mr J had been in the process of selling land worth around £105,000, which would've generated capital for him. He also had sufficient disposable income, after repaying other unsecured debt. He was also able to access the ISA to repay debt and could've stopped the contributions at any time, so overall the recommendation appeared both suitable and affordable.

In respect of the OAC and failure to provide annual reviews, the investigator noted that no evidence had been provided to show that they had been carried out. So, he felt this part of the complaint should be upheld. He recommended that SJP calculate the notional value of the OAC deducted from Mr J's investment from 2018 to the date of surrender (the period which was agreed fell within our jurisdiction to consider), adjusted by the level of investment return achieved by the actual funds Mr J had invested in, from the date the fees were paid to the date of surrender, with interest at 8% simple added to the loss amount from the date of surrender to the date of settlement.

The investigator also recommended that SJP should pay Mr J compensation of £75 for the distress and inconvenience that not receiving ongoing reviews would've caused him.

SJP accepted the investigator's view and agreed to pay the proposed compensation.

Mr J's CMC didn't accept, saying –

- The investigator had concluded that the additional cost of the new ISA had been justified by Mr J's need for ongoing advice, but that advice had never been provided.
- The principles and underlying rules of Financial Conduct Authority's guidance regarding the churning of pensions should be considered here, because of the similar circumstances.
- The adviser should've referred Mr J to an independent adviser if the costs of providing SJP's limited service exceeded the costs of his existing product.
- SJP had failed to demonstrate how a medium ATR had been determined, and it didn't agree that the existing ISA had been invested at a higher level of risk.
- Mr J had stopped the increased regular contributions then surrendered the ISA entirely in 2019, indicating that the recommendations had been unaffordable.
- A higher figure of £300 should be awarded to reflect the distress and inconvenience caused to Mr J.

The investigator wasn't persuaded to change his opinion. He said, in brief -

- He maintained that although SJP's charges were higher than Mr J's existing provider, that didn't necessarily make the advice unsuitable. Mr J had a need for the advice as his existing funds hadn't been in line with his attitude to risk and he'd also expressed a preference for face-to-face advice.
- Regarding affordability, Mr J had successfully paid off debts and the invested money was spare income, which supports the investment having been affordable. It was

also accessible should access have been required in an emergency.

- The fact that it appeared that annual reviews weren't subsequently conducted was a separate issue in respect of which the complaint had been upheld. It didn't mean that Mr J hadn't had a need for ongoing advice at the time of the advice.
- The additional cost of 0.77%, and slightly higher rate for the regular contributions, would've been reasonable when considering the market rates for independent advice. As a tied adviser the SJP adviser couldn't recommend a whole of market product but nevertheless had a suitable product available.

As Mr J's CMC remained in disagreement with the investigator's opinion, the matter was referred to me to review.

### **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 come to the same conclusions as the investigator and for broadly the same reasons. In short, I'm satisfied the advice given to Mr J to transfer his ISA was suitable. And further, a refund, plus investment return, of the OAC taken for annual reviews missed from 2018 onwards is fair compensation, plus £75 for the distress and inconvenience caused.

Turning first to the suitability of the advice, there are two key issues to consider in that respect – firstly, was the new investment consistent with Mr J's circumstances, needs and objectives and secondly, was it reasonable to recommend the transfer of the ISA to SJP, incurring additional costs to do so.

In respect of the former, it was documented that Mr J's attitude to risk and capacity for loss were discussed in the context of SJP's document "*A guide to understanding the balance between risk and reward including the St. James's Place portfolios and funds*", which offered a clear explanation of the different types of assets and risks. Evidently, Mr J had experience of investing via the existing ISA, which as the investigator noted was at quite a high level of risk, with most of the funds sitting at the higher end of the spectrum.

While there was no particular process documented – for example a completed questionnaire – that demonstrated how Mr J's ATR was determined, I don't think a 'medium' attitude appears out of step with his circumstances and experience at the time. And I note that a slightly higher 'upper-medium' level of risk was agreed for the regular contributions, based on the potential impact of the higher risk being smoothed by pound cost averaging. This suggests to me that it likely a meaningful discussion and consideration of risk took place, as was documented in the suitability report.

In respect of affordability and the relatively limited time for which the ISA was held and the higher regular contributions maintained, at the time of the advice it was noted that Mr J had no plans to access the funds until he retired, which was estimated at being in around seven years. Clearly plans changed and it appears that Mr J and his wife may have decided to embark on a move abroad sooner than initially planned. But in any event the notes in the suitability report suggest there was a discussion around holding the ISA for the medium to long term, and I can't see there was anything that should've alerted the adviser to the possibility of early withdrawal.

Although the contributions were increased quite substantially early on following the transfer, Mr J's financial circumstances appear to have been evolving, with him having recently paid off debt using funds previously held in the ISA and he was in the process of selling land,

which was likely to generate around £100,000. The contributions were flexible and could be adjusted or stopped at any time and the funds in the ISA remained accessible. So, I don't think the actions taken over the five years following the initial advice indicate an issue at the outset with affordability.

In respect of the transfer of the ISA to SJP and the increased costs involved, a clear comparison was presented to Mr J showing the costs and the additional growth that would need to be achieved by the SJP portfolio, which was in part addressed by a reduction made to the initial advice charge. The suitability report noted "*After a discussion we agreed that the immediate costs of replacement, as set out below, are reasonable in the context of the reasons for wishing to consider replacing the current investment that you have expressed.*"

I note what the CMC has said about SJP's limited offering and that in the circumstances a referral should've been made to an independent financial adviser. But SJP was able to make what I'm satisfied was a suitable recommendation to Mr J, which addressed his issues with his current provider and was consistent with his objectives, attitude to risk and affordability. I don't think the fact that SJP's offering came at a slightly higher cost than his existing provision, meant that it was by default unsuitable for him.

Of course, in this specific case it is unfortunate that one of the 'selling points' of the recommendation was the provision of an ongoing advice service that Mr J required, which it appears SJP then failed to provide. But I don't think the subsequent failure to provide part of the service indicates that the initial advice was unsuitable, or that it wasn't required in the first place.

In respect of the OAC, it doesn't appear to be in dispute that there was no ongoing service provided, so I agree it's fair and reasonable that Mr J been reimbursed in line with the investigator's recommendation.

Lastly, in respect of an award for any distress and inconvenience caused, while I note the CMC's comments reading SJP's response to the complaint, I've not seen that Mr J has been impacted by the matter to a degree such that the sum of £75 recommended by the investigator should be increased.

### **Putting things right**

SJP must refund the OAC paid by Mr J in respect of the missed reviews from 2018 to the date of surrender of the ISA in June 2019.

The value of the ISA at that point would've been higher by an amount equivalent to those charges and any investment returns they would've gone on to benefit from. So SJP should pay the difference between what the plan was worth at surrender and what it would've been worth had the OAC not been deducted.

SJP should take account of any withdrawals or additions to the investment when carrying out these calculations to ensure the values it's using reflect the actual growth the charges would've achieved, had they not been deducted. I consider that each advice meeting is paid for by the annual charges that are paid prior to that meeting, so SJP should keep that principle in mind when deciding on the start date for any growth payment.

- Calculate the notional value of the OAC deducted from Mr J's investments from 2018 to the date of surrender adjusted by the investment returns achieved by the actual funds Mr J was invested in from the date the fees were paid to the date of surrender.
- Interest should then be added to the loss amount from the date of surrender to the date of settlement at a rate of 8% simple.

- The amount should be paid directly to Mr J.
- There should be no allowance for tax on the loss calculation, as Mr J was invested into an ISA and the gains on this would have been tax-free, however income tax may be payable on any interest paid. If SJP considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr J how much it's taken off. It should also give Mr J a tax deduction certificate in respect of interest if she asks for one, so she can reclaim the tax on interest from HM Revenue & Customs if appropriate.

SJP must also pay Mr J £75 for the distress and inconvenience caused.

### **My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 16 October 2025.

James Harris  
**Ombudsman**