

The complaint

Mrs J complains about the advice she received from St. James's Place Wealth Management Plc trading as St. James's Place ('SJP') to invest in an investment-based Individual Savings Account (ISA) and an investment bond. She says the advice was unsuitable based on her circumstances and attitude to risk. She also complains that SJP failed to provide the ongoing advice service she agreed to and paid for. Mrs J is seeking compensation for both issues.

What happened

The following is a summary of the key events and background leading up to this complaint.

Mrs J met with SJP in September 2013 to discuss investment opportunities. I understand Mrs J contacted the adviser direct because she'd dealt with them before, at their previous employer, a few years prior. SJP completed a fact-find document to record Mrs J's circumstances and objectives. The key details recorded here are as follows:

- Mrs J was aged 70, widowed and in good health.
- She was retired and in receipt of pension income of around £12,500 a year.
- Her monthly disposable income was around £130, she had around £56,000 in cash-based savings including a cash ISA. She owned her own home and had no liabilities.
- Her objective was to seek out better returns than cash-based savings over the medium term with a lump sum investment of £35,000. Her objective was growth, but she wanted the option of taking regular fixed withdrawals in the future to supplement her income as the cost-of-living increases.

SJP also carried out an assessment of Mrs J's attitude to risk referring to its 'Understanding the balance between risk and reward brochure.' I've not been provided with a copy of this. But in the suitability report of 25 September 2013, which documented some of the discussions had, as well as ultimately its recommendation, it said:

'We discussed the various different types of assets, for example cash, bonds, equities, property and alternative investments, and you are aware of the risks associated with each. We agreed that you are best described as having some previous experience of investing in assets which contain risk to your capital as although at present you do not hold any risk based assets you have previously held property fund investment bonds and other equity based unit trust investments for a number of years and have experienced significant volatility to these previous investments whilst you held them.'

The report recorded that Mrs J confirmed she was a 'medium' risk investor on its risk spectrum. SJP described this as:

'This means that you want your capital to keep pace with inflation and are comfortable with your capital being invested in equities and property, some of it overseas. You realise that there is a risk that there could be significant falls in the value of your investments, and that accepting this risk gives you the potential to achieve better long-term returns.'

The report went on to say that further discussion identified Mrs J was at the lower end of the medium risk category and that she wanted to limit her equity exposure to limit the fluctuations in capital while accepting this meant lower growth potential.

The report recommended that Mrs J invest £35,000 – £5,760 in an ISA and the remainder in an investment bond – to meet her stated objectives. SJP recommended Mrs J invest in its 'Defensive Portfolio'. This was made up of around 30% equity-based funds (including absolute return funds), 10% alternative, 15% Multi-asset and 45% in bonds. It referred to the invested amount being affordable – Mrs J had other readily accessible cash assets of more than £20,000, which was greater than the recommended amount. SJP also said Mrs J had capacity for loss as any losses would not impact her standard of living.

The suitability report referred to other documentation including an illustration document and a key facts document, both of which referred to the charges for the advice and investment, including the Ongoing Advice Charge (OAC), which said was 0.5% of the investment each year paid by deduction from its value. The specific product illustrations provided a monetary value for this based on the invested amounts and said it depended on the value of the fund.

About the ongoing advice service, the suitability report said:

'I strongly recommend that we conduct a review of your circumstances at regular intervals. I will write to you on an annual basis of the anniversary of your plan to provide you with an annual statement in respect of your investments so that we can arrange for a review.'

Mrs J duly accepted the recommendation and the investments went ahead.

In 2016, I understand Mrs J requested a partial withdrawal of her investment to help out her daughter. And later in 2017, she withdrew the remainder of her invested funds.

Mrs J complained to SJP in May 2024 using the services of a professional complaint representative. In summary she said she believed the advice was unsuitable because it wasn't right for a cautious and inexperienced investor, which led to early surrender of the investments. She said she had cash savings, which SJP should have advised she maintain. She said it had knowledge that she would need access to her funds, so it should not have tied up over 60% of her money in medium to long term investments. She also said she did not receive the ongoing advice and annual reviews she paid for. She said as a result of SJP's actions, she had suffered unnecessary distress and inconvenience.

Because SJP didn't provide its final response within the allotted time, Mrs J referred her complaint to us.

SJP subsequently provided its response to the complaint. In summary it said the advice it gave was suitable because it met Mrs J's requirements at the time. It said the costs were also explained and documented. In relation to Mrs J's complaint about the lack of ongoing advice / reviews, it said this had been brought out of time – more than six years from the

events complained about and more than three years from when Mrs J knew, or ought reasonably to have known, she had cause for complaint, so it would not consider this aspect of her complaint.

Because Mrs J remained dissatisfied, she asked us to look at the matter. One of our investigators looked at things and they concluded the advice Mrs J received was suitable. They said the investment was affordable, the more cautious risk recommended approach was appropriate in the circumstances, Mrs J had capacity for loss given her other available cash assets, and she could invest for the medium term because the funds had come from a recently matured bond meaning she didn't need access to them. They said there was nothing to indicate Mrs J would need access to her funds or that she had planned expenditure – it appeared the withdrawal and subsequent full encashment were due to changes in circumstances and were not known at the time of the advice.

In relation to the ongoing advice element of the complaint, they said this had been brought too late and so they couldn't consider it. They referred to what was written in the suitability report about the ongoing service and said the first anniversary and review was due in September 2014, so Mrs J needed to complain by September 2020. They said Mrs J would have known in 2016, when her adviser carried out a review at her home, if no reviews had taken place previously, and so had knowledge and reason to complain at this point.

Mrs J, through her representative disagreed. In summary she said, once the charges were taken into account, including the unnecessary ongoing advice fees, the illustrations showed she needed to take greater risk than she was comfortable with to enjoy minimal gains. She said she disagreed with the investigator's interpretation of her attitude to risk and her capacity for loss. She said SJP's fact-finding on this was wholly inadequate referring to the regulatory rules – Conduct of Business Sourcebook (COBS) 9.2.2. – and the requirement that advisers must understand a client's attitude to risk and ensure they understand the risk of any recommendation made. She also referred to regulatory guidance on the use of risk profiling tools by firms, and the importance of the 'know your customer' process and not to make assumptions about their client.

In relation to the investigator's time barring of the ongoing advice element of her complaint, Mrs J said this was despite their being no evidence that she was invited to a review. She said she only became aware she had cause for complaint following her representative's advertising on the back of the Financial Conduct Authority's (FCA) decision requiring SJP to carry out a past business review on ongoing advice charges. Mrs J, or her representative, incorrectly quoted the rules around complaint time limits – she said:

'In order to timebar a complaint you need to be able to demonstrate that the complainant became aware (or ought reasonably to have become aware) that they had cause for complaint more than six years after the event complained of; or (if later) three years from the date on which they should have done so.'

She said the fact that an appropriate and compliant annual suitability review should have taken place outside the relevant time limits but did not, does not on its own mean she ought to have been aware she was being charged for an ongoing service which didn't take place.

She said she didn't think she should have understood that a missed annual review would be grounds to raise a complaint and ask for a refund, especially when the fees were not clearly disclosed. Mrs J also said the investigator had failed to comment on or make an award for distress and inconvenience.

Because the investigator wasn't persuaded to change their opinion, the matter was 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.

I've taken into account relevant law and regulations, regulatory rules, guidance and standards, codes of practice, and (where appropriate) what I consider to have been good industry practice at the relevant time. And where the evidence is incomplete or inconclusive I've reached my decision based on the balance of probabilities – in other words, on what I think is more likely than not to have happened, given the available evidence and wider circumstances.

The applicable rules, regulations and requirements

As a regulated firm, SJP had many rules and principles that they needed to adhere to when providing advice to Mrs J. And these can be found in the FCA handbook under the (COBS) and Principles for Businesses (PRIN) as they were at the time of the advice.

Having considered all of this and the evidence in this case, I've decided to reach the same conclusions as the investigator and for broadly the same reasons. I'll explain why.

Ongoing advice

I'd firstly like to deal with the ongoing advice element of Mrs J's complaint.

I don't have free rein to consider every complaint brought to the Financial Ombudsman Service. The rules by which we operate are set out in the Dispute Resolution or DISP section of the FCA handbook. The relevant rule in this case is DISP 2.8.2R. This says that, unless a firm agrees:

'The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service:

(1) more than six months after the date on which the respondent sent the complainant its final response, redress determination or summary resolution communication; or

(2) more than:

(a) six years after the event complained of; or (if later)

(b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint;

unless the complainant referred the complaint to the respondent or to the Ombudsman within that period and has a written acknowledgement or some other record of the complaint having been received;

unless:

(3) in the view of the Ombudsman, the failure to comply with the time limits in DISP 2.8.2 R or DISP 2.8.7 R was as a result of exceptional circumstances;'

And in this case, SJP does not agree to us considering the complaint.

The events being complained about here are the missed annual advice reviews Mrs J says

did not take place following her investment in September 2013. Mrs J has implied that no reviews were carried out and SJP does not have any supporting evidence of any reviews conducted. So, the events complained about are the alleged missed annual reviews from the anniversary of Mrs J's investment in September 2014 up until 2017 when Mrs J encashed her investment. Each missed review is a separate event. In this case, all four events happened more than six years before Mrs J complained about them.

So, I need to go on to consider when Mrs J knew, or ought reasonably to have known, she had cause for complaint to establish if she's complained within three years from this date thus extending the six-year time limit.

Mrs J, through her representative, says that she first became aware she had cause for complaint following her representative's advertising about the issue on the back of the FCA's instruction to SJP to carry out a review of the ongoing advice service they provided to their clients. And this was in 2024. But I think Mrs J ought reasonably to have known she had cause for complaint much earlier than this. I'll explain why.

As I set out in the background section above, the paperwork Mrs J received from SJP at the time of the advice in 2013 was, in my view, clear that Mrs J had agreed to SJP's ongoing advice service and that there was a cost involved. The key facts and illustration documents accompanying and specifically referred to in the suitability report SJP produced, clearly disclosed this cost in both percentage and monetary terms based on the amounts Mrs J was investing. It also said the fee of 0.5% was each year. So, given the fee was for an ongoing service and the fee was each year, I think it is reasonable for Mrs J to have understood there was an ongoing cost to the service.

And importantly, I think the suitability report clearly set out what Mrs J could expect from the ongoing review service – that is, her adviser would contact her annually on the anniversary of her investment with an annual statement and arrange for a review. So, from this, I think Mrs J reasonably understood what should happen and when in relation to the ongoing review service she agreed to.

Mrs J, through her representative, has said the fact that an appropriate and compliant annual suitability review should have taken place outside the relevant time limits but did not, does not on its own mean she ought to have been aware she was being charged for an ongoing service which didn't take place. And she's said she didn't think she should have understood that a missed annual review would be grounds to raise a complaint and ask for a refund, especially when the fees were not clearly disclosed.

But as I've explained above, I think Mrs J ought reasonably to have understood that she was paying something extra to have an ongoing review service (and how much) as clearly set out in the advice paperwork she was given at the outset. I also think she ought reasonably to have understood how that service would be offered to her, and crucially when she should expect to receive it. In my view, the information Mrs J was given about this was not ambiguous.

So, when, as Mrs J has alleged, the ongoing review didn't happen as she was told would be the case on or around September 2014 – that is, the first occasion the review was missed – it is at this point she ought reasonably to have understood that something might have gone wrong, and so had cause for complaint.

It is for these reasons I'm satisfied Mrs J's awareness that she had cause for complaint was in September 2014. Three years from this point is September 2017. So, it follows that this

does not extend the six-year time limit for Mrs J to bring her complaint. This means Mrs J needed to bring her complaint about the missed reviews by 2020, 2021, 2022 and 2023 respectively (each missed annual review being a separate event.) Mrs J didn't bring her complaint until 2024, so she's out of time under our rules.

I can see the investigator referred to 2016 being the point Mrs J had knowledge and reason to complain. They referred to evidence SJP provided to us where the adviser was asked to comment on the complaint. Here the adviser referred to a meeting they had with Mrs J at the time she wanted to make a withdrawal. If this was indeed an annual review meeting, and as I said there is no supporting evidence that this was the case, then on the basis that the two previous annual reviews had been missed as Mrs J alleges, I agree she ought to have been aware she had cause for complaint at this point. But I think this is the latest point. I still think Mrs J ought reasonably to have been aware she had cause for complaint sooner and on the first occasion a review was allegedly missed in September 2014. But even if I thought it was later on in 2016, Mrs J's complaint is still out of time because three years from 2016 is 2019, which does not extend the six-year time limit.

I can still consider the complaint if there are exceptional circumstances, which reasonably explain the late referral. But I've not been provided with anything to show this is the case here.

This means I cannot consider Mrs J's complaint about the missed ongoing advice reviews from 2014 to 2017 because it's been brought out of time – I simply don't have the power to consider it.

Suitability of advice

Turning to the suitability of the advice Mrs J received – I agree with the investigator's conclusions here. I think the advice she received was suitable. I'll explain why.

SJP recorded Mrs J's personal details, circumstances and objectives as well as her attitude to risk in a fact-find document, the key details of which I set out earlier on. This is the type of information and recorded in the level of detail I would expect a firm like SJP to have captured to demonstrate the advice given was appropriate for their client's needs.

Firstly, Mrs J's objective for investing was for capital growth over the medium term. It was recorded that she was disappointed with the returns on cash-based savings products and wanted to explore the alternatives available. I think given Mrs J's income needs were recorded as being met, her objective for growth was reasonable. As for the term of the investment, it appears that Mrs J had been used to tying up some of her money in fixed-term deposits. And despite what Mrs J has said, there was nothing within her circumstances as documented at the time in 2013 to indicate or suggest that she needed access to her funds within the medium to long-term. For example, I haven't seen anything to indicate that an upcoming significant life event would cause a change in Mrs J's circumstances and objectives in the near future or that an investment term of five years was therefore unreasonable. And certainly nothing to persuade me that SJP ought reasonably to have known that she would need access to some of the funds in 2016 and then withdraw the remainder the following year.

It seems to me that Mrs J's need for the funds at these times was due to a change in circumstances – something not reasonably foreseeable at the time.

So, in the circumstances I'm satisfied Mrs J could reasonably invest her funds for the medium to long term – at least five years.

Turning to Mrs J's attitude to risk – Mrs J has said that SJP's fact-finding in this area was completely inadequate and that it failed to properly assess things, implying that it drew assumptions about her attitude to risk. But I disagree. I think the information available from the time suggests otherwise.

SJP documented that Mrs J was deemed a 'medium risk' investor on its spectrum. I said above that I haven't been provided with the document referred to in the report as forming part of the discussion with Mrs J in arriving at this categorisation. But I don't think this matters. In my view, it is clear from what's recorded in the suitability report that there was a detailed discussion on this topic, including importantly Mrs J's capacity for loss. And the level of detail recorded here is what I would expect to see – SJP did not simply rely on its risk profiling tool to arrive at Mrs J's risk appetite.

From this discussion, it was recorded that it was more appropriate for Mrs J to invest with a lower degree of risk. And I think this was reasonable in the circumstances. While I think Mrs J did have a reasonable capacity for loss – for example after the investment of £35,000, this still left her with over £20,000 in readily accessible cash-based deposits to draw on as an emergency fund, and as I said above, her income needs were satisfied from her pension income. But in her circumstances, I don't think there was a pressing need for her to take any more risk than the more defensive or lower risk approach SJP went on to recommend.

I'm also satisfied that Mrs J ought reasonably to have understood the level of risk she was taking with her funds. Not only from how SJP described things in the suitability report, but it's clear that Mrs J had some prior experience of investing, even though she didn't currently hold any investment-based products at this time. So, I think Mrs J likely understood the concept of risk and reward and agreed to and accepted the level of risk with her funds.

SJP recommended Mrs J invest £5,760 in an ISA and the remainder in an investment bond. I think both products were suitable for Mrs J based on her documented objectives. The investment in the ISA fully utilised her annual ISA allowance for the tax-year (Mrs J had put £5,760 in a cash ISA already.) so this was tax-efficient. And I think the investment bond was suitable because Mrs J had indicated that she wanted the option, or the flexibility, to take a regular fixed income in the future if her needs demanded it. Which the bond could provide using its tax-deferred withdrawal feature.

As I referred to above, SJP recommended Mrs J invest in its 'Defensive Portfolio', which it deemed was at the lower end of its risk spectrum and in an attempt to limit the fluctuations in value Mrs J said she preferred. And based on the make-up of the portfolio I set out in the background section above, including the equity-based content, I think the investment recommendation was suitable in the circumstances and in line with the level of risk Mrs J indicated she wanted to take.

So, taking all of the above into account, I think SJP's recommendation was suitable. It met Mrs J's stated objectives and, in my view, was in line with the level of risk she was reasonably prepared and agreed to take at the time.

I'd add that I'm satisfied the costs were adequately disclosed to Mrs J. The suitability report referred to attached illustrations for both products – I've no reason to doubt they were included here – which contained the requisite cost information.

This included the initial advice fee, the fund annual management charges and the ongoing advice fee I referred to earlier on.

Mrs J has said that, once all of the charges are taken into account, it showed she needed to take a greater level of risk than she was comfortable with to enjoy minimal gains. As I have

concluded above, I think the charges were clearly disclosed. And I'm satisfied Mrs J invested in line with her attitude to risk – it wasn't greater than I think she indicated she was comfortable with or agreed to. I also think that the recommendation was suitable taking account of the charges and Mrs J's recorded objectives. Mrs J was dissatisfied with returns on cash-based savings products, and I think the investment had the potential for growth, and the potential to outperform the cash-based returns available at the time over the medium to long-term Mrs J was prepared to invest for. Returns on cash were low at this time due to the low Bank of England base rate (0.5%.) And it was low returns Mrs J indicated she was disappointed with and the primary reason she approached SJP for advice seeking an alternative.

So, overall, I don't think SJP did anything wrong here.

I can see Mrs J has referred to the distress and inconvenience this matter has caused. But given my findings, I'm satisfied there is nothing SJP needs to do to put things right.

My final decision

For the reasons above, I've decided the following:

- Mrs J's complaint about the alleged missed ongoing annual advice reviews is out of time, so I cannot consider this element of her complaint.
- I do not uphold Mrs J's complaint about the suitability of the investment advice given to her in 2013, so I make no award in her favour.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J to accept or reject my decision before 3 September 2025.

Paul Featherstone

Ombudsman