

The complaint

Mr D, through his professional representative, has complained about the suitability of the advice given to him by St. James's Place Wealth Management Plc ("SJP") to invest in an Individual Savings Account ("ISA") and switch his pension to an SJP Retirement Account ("RA"). He has also complained that the annual reviews that he has paid ongoing charges for were not carried out as they should have been.

What happened

Mr D met with SJP a number of times between 2014 and 2024 (when he raised his complaint) for advice about his investments and retirement savings.

When Mr D approached SJP for the first time in 2014, he held a significant amount of cash in deposit accounts and cash ISAs. He had previously held a Stocks and Shares ISA but had encashed it some time earlier due to poor returns. He also held a private pension with a firm I will refer to as Provider A which was at the time worth around £53,000. He was also already receiving income from another private pension.

At the time Mr D was around 65 years of age. He was still working despite already being of state retirement age and he planned to work for at least another year. His earnings in total, including pension income, left him with a disposable income of around £2,000 a month. He was married and jointly owned his home with his wife. He had £500 left on his mortgage to pay which he was holding off doing to avoid the early repayment charge. He had one dependent child. He also had around £100,000 in cash accounts and held £38,000 between cash ISAs, a cash bond and a regular savings account.

When Mr D met with an SJP adviser a suitability report was produced dated 8 October 2014. In this it was recorded that Mr D had identified his objectives for the time as being to build up funds for his retirement in a tax efficient manner and achieve returns above those available from cash deposit accounts. He held all of his monies in deposit accounts and wanted to invest some of it to achieve better returns. It was also recorded that Mr D was aware of the associated risks with equities.

Mr D had decided to invest a total of £6,000 from his funds on deposit (which had been built up through savings over the years) and start a regular savings plan with £350 per month and invest over the medium term in a tax efficient way. He had no specific timescales in mind and no target amount to reach but he wanted to achieve capital growth over what was being offered to him through his deposit accounts.

At the time Mr D was assessed by SJP to be a medium risk investor and he was advised to invest the lump sum and the regular payment into an SJP Stocks and Shares ISA. The recommended portfolio for the ISA was an SJP Defensive Portfolio which was deemed to match Mr D's attitude to risk.

In October 2015 Mr D returned to SJP for further advice. At the time his SJP ISA was worth almost £10,000. Again, a suitability report was produced documenting Mr D's needs and objectives along with the advice he was given.

Mr D's personal circumstances remained the same as the year before and he was still working but was looking to reduce his working hours to three days a week in a few months' time. He had some short-term future plans to change his car and possibly have some laser eye surgery done.

He still held the majority of his funds in cash based/deposit accounts as well as the ISA he had taken out a year before with SJP. And he continued to hold a significant amount in readily available funds that could be used for emergencies if required.

It was recorded that for one of Mr D's cash-based accounts the fixed rate period had recently ended, and he wasn't happy with the new fixed rate being offered to him by his existing provider and also that he believed his funds could do much more if they were transferred to SJP. His aim was to invest for future growth and achieve better returns over the medium to long term. And the documents record that Mr D also wanted to have access to a trusted wealth adviser and receive regular reviews on an ongoing basis and that he was happy with SJP's investment strategy.

So, his objective was to transfer £6,000 from one of the cash ISA accounts held with a particular provider into the existing ISA with SJP. The remaining £13,700 of the cash ISA would remain where it was and it was recorded Mr D may use this to fund the expenses listed above.

The adviser confirmed that there were no penalties for moving the plan and no other specific features that would be lost on transferring from the cash ISA to the SJP ISA.

The suitability report also recorded that alternatives to transferring to the SJP ISA were discussed but were discounted because Mr D wanted to transfer some of his cash to SJP and see what he could achieve through its investment management approach. The disadvantages of the new plan were also covered with the adviser explaining that there would be an initial charge for the plan; general charges for equity ISAs would apply whereas there were usually no such charges for cash ISAs; and that cash ISAs have the benefit of capital security and interest applied whereas the value of an equity ISA would rise and fall.

In terms of Mr D's attitude to risk which SJP reassessed Mr D agreed to be described as having some previous experience of investing in managed funds through his existing ISA with SJP. This time he was assessed as being a lower to medium risk meaning he was a cautious investor but wanted the value of his capital to keep a pace with inflation. He was investing for at least five years. He was prepared to consider investments which may fall in value so was comfortable with some money being invested in UK and overseas equities and property, but not all of it. He also accepted and understood that it was possible he could lose some of what he had invested.

In the same document Mr D confirmed that a fall in value of this investment would not have a significant impact on his standard of living because he was comfortable with his current level of income. And the impact on his current disposable income would be nil as he was transferring funds already invested with another provider.

Mr D was advised to invest in the Immediate Income portfolio comprised of assets such as corporate bonds, gilts equities and property. This was recommended because the portfolio seeks to provide a consistent level of income with some potential for capital growth over the medium term – at least five years. It invested in a high proportion of fixed interest assets predominantly in the UK and could also typically hold commercial property and equities. The adviser also made it clear that there would be some fluctuations in value and income.

In May and July 2016 Mr D met with SJP again this time to discuss switching his private pension with Provider A (valued at around £76,000) to a drawdown arrangement. This was because he wanted to take a lump sum of money in the region of £19,000 to purchase a car and also because he didn't want to leave his funds with provider A because this was a company scheme and as Mr D was leaving the company soon he didn't want to have to deal with the provider in his retirement.

At this time Mr D was still working earning a gross salary of £17,500 but it was noted that he was being made redundant soon. He had a pension income of £5,460 gross per annum from two private pensions and was also in receipt of the state pension of £9,516 gross per annum. He also held emergency fund of £20,000 in accessible cash accounts.

Mr D confirmed he planned to continue to work part time for the foreseeable future and had already lined up alternative employment. He expected his income of £17,500 from employment to continue until the end of August when he was going to take redundancy and while he accepted the income would stop the part time job he had lined up would replace this lost income. He also confirmed that he didn't think he would need to draw an income from these funds for the foreseeable future because he intended to work as long as he could and at that time his current income was more than C's outgoings at the time so there was sufficient to not require him to access the drawdown plan. It was recorded that Mr D also felt that he had significant level of savings and investments that could be used to provide additional income or capital expenditure and a plot of land worth £125,000 which he intended to sell before he needed to draw any further funds from his pension. So, he had a capacity for loss should the funds in the drawdown plan reduce in value.

The adviser found out that taking a tax-free lump sum was not available through Provider A and while Mr D could take his Uncrystallised Funds Pension Lump Sum ("UFPLS") from his existing plan it would be a lower amount than Mr D had wanted and he would be charged tax on that amount further lowering the amount he would receive.

So, Mr D was advised to start an RA with SJP so he could take the benefits via flexi-access drawdown. This was because the adviser felt this would provide Mr D with the tax-free cash that he wanted – and also because he had no need for an income and didn't think he would need it in the next five years. Although, the RA did provide him with the flexibility to take an income which was still important to Mr D because it provided him with the peace of mind that these funds were available for him to draw on in the future if his circumstances changed. The RA also allowed for the fund to be left to his wife if he died before he drew on it.

The documentation from the time also recommended that regular reviews of the plan took place to look at the sustainability of the drawdown plan and explained that if this became the case, they would consider an alternative course of action.

The adviser made it clear that an early withdrawal charge would apply to the first six years of his plan if he moved to SJP and he also covered any relevant costs and charges explaining to Mr D that there were no costs for the advice or exit penalties. However, the adviser did explain that the charges for the RA were higher than what Mr D was paying with Provider A. The ongoing charge under the drawdown plan was 2.01% per annum – compared to his then current plan which was 1.61% - and that this would impact the growth achieved. However, the advisor also noted that if Mr D made a withdrawal from the plan with Provider A he could only receive the total of UFPLS sum of £9,024 and he would have to pay tax of £5,146 on the withdrawal. But, if he transferred the full amount of the pension to the SJP drawdown plan he would receive a tax-free lump sum of £19,024 and pay an extra £9,188 in charges over the next ten years compared to his existing plan.

In terms of Mr D's attitude to risk this time he was assessed as a medium risk investor

meaning he wanted his capital to keep pace with inflation and was investing for at least five years. And he confirmed he was comfortable with most of the capital being invested in equities and property some of it being overseas and he understood there could be significant falls in the value of his investments. As a result of this he was recommended to go into the balanced income portfolio – which the adviser said would provide Mr D with a wide spread of asset classes. It was also noted that Mr D felt this would be the right choice to provide the growth he was looking for.

Alternatives to making this transfer were also discussed such as an annuity which Mr D discounted because he didn't want to take a regular income from his pension at the time – and such as deferring taking benefits which was discounted because Mr D wanted a lump sum for a car. They also discussed using existing assets or borrowing but Mr D said he didn't want to deplete his savings and investments and didn't want any further debt.

It was recorded that Mr D felt the drawdown would give him the flexibility he required, and he confirmed he was willing to accept the risks that the fund performance could impact the drawdown plan. He stated he had gained experience of asset backed investment and investments in managed funds through his pension plan with Provider A and the SJP investment and he had experienced volatility in the market and understood and accepted that the value of his capital would rise and fall. He therefore proceeded with the recommended advice.

In February 2017 Mr D met again with SJP and again a suitability report recorded the discussion of Mr D's needs and objectives that took place. This time he wanted to focus on investment planning and his objectives were to invest £5,000 from funds currently held on deposit and to also transfer £25,000 from one of his cash ISAs.

It was noted that Mr D had decided to transfer after receiving his updated interest statements and the rates he was now receiving on these savings had reduced to 1%. He had maintained over half of the funds still on deposit but it was noted that he wanted to invest for the medium term to try and achieve capital growth initially. Mr D also had a further objective to invest £5,000 from funds on deposit sourced from accumulated income.

His then current income was £14,976 per annum and he held an emergency fund of £10,000 in accessible cash.

Mr D was advised to transfer £25,000 from the existing cash ISA to the SJP ISA as this was deemed to meet his objectives of achieving capital growth with the potential to outstrip inflation over the medium term. It also enabled Mr D to invest in a tax efficient manner and in a flexible way as he would be investing in a diversified spread of asset classes rather than leaving all on deposit.

The adviser detailed the costs of accepting the advice and replacing the existing plan – there were no immediate costs or exit penalties and no tax charge.

The adviser also explained the potential disadvantages of replacing the existing plan such as higher charges, that cancellation of the plan would cause him to lose the ISA status of the investment, along with the other differences between the equity ISAs and cash ISAs.

In terms of Mr D's attitude to risk this time he was assessed as being a medium risk investor meaning he wanted his capital to keep pace with inflation and was investing for at least 5 years. He was comfortable with most of his capital being invested in equities and property, some if it overseas. He acknowledged there could be significant falls in the value of his investments. And he confirmed that a fall in the value of this investment in the short term

would not have a significant impact on his standard of living because he didn't require an income from the investment.

The advice to Mr D was to invest in the balanced portfolio as it would give him a wider spread of asset classes and a lower level of equity holding than the managed fund portfolio.

In August 2017 Mr D met with SJP again and the suitability report dated 2 August 2017 noted his focus was on increasing investment planning provisions. His primary aim at this time was to invest some of his available funds over the medium/long term because he wanted to build up funds for use over the longer-term future and he wanted to achieve returns higher than those he could achieve from deposit-based accounts and he didn't have a growth target in mind. The funds had arisen from the sale of Mr D's campervan.

Mr D Confirmed that from an investment planning perspective his circumstances had not changed from when he was originally advised to take out the ISA and Unit Trust. This time he wanted to invest £15,000 from funds he held on deposit. £11,000 was to be invested into the ISA as he had already funded £9,000 into a cash ISA since April 2017 and £4,000 was to go into the Unit Trust feeder.

This time Mr D was assessed to be a lower to medium risk investor meaning he was a cautious investor but wanted the value of his capital to keep pace with inflation and wanted to invest for at least five years. He was willing to consider investments which could fall in value so was comfortable with some of his money being invested in the UK and overseas equities and property, but not all of it. He accepted it was possible he may lose some of what he invested in return for the possibility of better growth in the longer term.

The adviser recommended Mr D invest in the Immediate Income Portfolio which was deemed to have a risk level of lower medium.

On 4 June 2018 Mr D emailed SJP to explain that he wanted to move his ISA to a different provider.

On 8 June 2018 records show that a review meeting was carried out by SJP for both his pension and ISA investments. His personal circumstances were updated accordingly. The risk profile of how he was invested was noted and Mr D confirmed he was happy to leave it unchanged.

Records provided by SJP also show that annual reviews of Mr D's RA were carried out in December 2023 and September 2024.

In June 2024, via his professional representative Mr D raised a complaint against SJP about the suitability of the advice he had received and the lack of regular reviews. SJP didn't issue a final response letter within the correct timeframes and so Mr D's representative referred the complaint to this Service.

Upon notification of this SJP raised a time bar objection under the Dispute Resolution Rules DISP (explained in more details below) saying that the Service couldn't consider Mr D's complaint about the ongoing adviser charges and lack of regular reviews prior to June 2018 because any before this period fell outside of the required timescales set out in DISP.

The complaint was assessed by one of our investigators who upheld it in part. He agreed with SJP that under the DISP Rules any missed reviews that took place six years before Mr D had raised his complaint were out of time and so couldn't be considered by this Service. In terms of the reviews post June 2018, he felt that as there was no evidence provided by SJP of reviews of the RA taking place in 2019, 2020, 2021 and 2022 any

charges Mr D had paid for these should be refunded to him as the service had not been delivered.

In terms of the suitability complaint points the investigator was of the view that the advice at each stage throughout the years was suitable for Mr D and so SJP hadn't acted incorrectly.

He did, however, add that SJP should pay Mr D £150 for the distress and inconvenience this issue had caused Mr D.

In response to the assessment SJP provided documentary evidence that the review was carried out in 2019 but agreed that it would refund the charges Mr D had paid for the missed reviews from 2020, 2021 and 2022. The investigator was satisfied with the evidence.

Mr D's representative disagreed with the findings and provided numerous comments in response to the investigator's assessment. The investigator dealt with these comments but wasn't persuaded to change his initial outcome.

So as no agreement could be 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.

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.

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.

Mr D's representative has made many detailed comments in response to the investigator's assessment. I've considered everything it has said. However, our rules don't require me to address or respond to each and every point raised. We're an alternative to the court not a substitute for it. As such my role is to decide how a complaint should be resolved with minimal formality. And I aim to present my conclusions in as clear and as concise a manner as I can. In doing so I focus on the key issues and the reasons that are crucial to my decision making. So, if there's something I haven't mentioned, it isn't because I've ignored it. It's because I'm satisfied I don't need to comment on it to be able to reach what I think is a fair and reasonable outcome in the circumstances of this complaint

Suitability of advice

I have considered the suitability of each piece of advice given to Mr D from 2014 onwards, the details of which are set out earlier in this decision. In my view the advice as a whole was suitable for Mr D taking account of his personal and financial circumstances at the time along with his stated needs and objectives.

Firstly, I am satisfied with the details contained in the point of sale documentation which indicates that each time the discussions between SJP and Mr D were thorough and detailed. I am also satisfied that SJP gave Mr D full details of the costs to him if he accepted each piece of advice. I can also see that alternatives were always discussed as were the potential disadvantages of accepting the advice. Along with a full exploration of Mr D's objectives and needs each time.

From looking at the point of sale information provided to me, it seems to me that Mr D had good knowledge of his investments and appears to have had a good idea of what he wanted to do each time he took the advice. And his knowledge increased over time as his investments also increased.

At each point of advice Mr D invested only a small proportion of his available funds starting in 2014 with around 6% of his available cash-based funds. This appears to be a prudent strategy for someone who at the start was largely new to risk based investments as it put Mr D in a position of not being financially disadvantaged if his investments failed.

Throughout the years of his relationship with SJP Mr D also seemed to have maintained a good amount of cash-based funds and gradually increased his risk-based investments which again seems to be a sensible strategy for someone in Mr D's position.

In terms of Mr D's attitude to risk, this varied over each point of advice from medium to lower-medium and this was reflected in the funds he invested in each time. This doesn't seem unusual to me. Whilst Mr D was retired at the time he was still working and so was receiving a regular income – which is very important when considering the suitability of this advice. He was also in a financially robust position from the start holding a significant amount in cash based, easily accessible funds, and this remained the case over the years. He was also investing lump sums of cash that were already invested elsewhere and so he wasn't using cash that taken from his immediate income or cash that could have been used for something else. So I don't disagree with the levels of risk Mr D was assessed at at each point of advice or the level of risk which the advised investments exposed him to. I also consider that because of his financial position along with the fact his income exceeded his outgoings he had a good capacity for loss if the worse happened.

Furthermore, Mr D had approached SJP because he wanted to achieve better growth on his accumulated funds. So given this, I am satisfied that being assessed as medium and lower to medium was suitable for him, because without any risk, or at least a certain level of risk, it was very unlikely that his objective of better returns than cash based/deposit accounts would have been met.

Overall, I consider that from the information I have seen Mr D wanted to invest with SJP because he was unhappy with the low returns on his existing investments. In accepting each piece of advice Mr D put himself in a good position to achieve better returns than his cash-based accounts and increased the diversity of his portfolio thereby allowing more potential growth, whilst maintaining a strong financial position just in case things went wrong. He also kept returning to SJP each year for further advice and when it suited him he felt confident enough to move away from SJP (for the ISA). I therefore am of the view that the advice given to Mr D over the years from 2014 was suitable for him and met his stated needs and objectives.

In terms of the suitability of the pension switch, as noted earlier in this decision Mr D told the adviser that he didn't want to stay with Provider A as it was linked to a company he was due to be made redundant from. It was also recorded that he wanted his pension to be with his adviser with whom he had built a good relationship by that time. But most importantly Mr D wanted access to a lump sum of cash from his pension and Provider A didn't offer drawdowns or partial withdrawals, whereas SJP could offer a pension plan that would allow him to take his tax-free lump sum. And when the figures were calculated, what Mr D could get if he accessed his UFPLS via Provider A wasn't as good as if he transferred to SJP, nor would it have met his specific objective, even when taking into account the higher charges for the SJP plan.

So, it seems to me that the advice to switch his pension to SJP also was suitable for Mr D and met his specific objective at the time.

The Ongoing Adviser Charges (“OACs”) paid for the provision of annual suitability reviews

The Financial Ombudsman Service isn't free to consider every complaint that's brought to us. We are governed by rules set by the FCA's Handbook, the DISP Rules as mentioned above. They set out the complaints that we can (and can't) consider and I have to strictly apply these rules.

The specific DISP rule relevant for this complaint is DISP 2.8.2 R which sets out the following:

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

.....

(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 had written acknowledgement or some other record of the complaint being 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;

The rules don't say that Mr D needs to know exactly what's gone wrong to bring a complaint – only that he needs to have a reasonable awareness *something might* have gone wrong.

If a complaint is brought outside of the time limits set out in the rules, we'd only be able to consider it if SJP has consented – which it hasn't – or if the complaint was brought late due to exceptional circumstances. The FCA gives an example of exceptional circumstances as being incapacitated.

Mr D made his complaint on 7 June 2024 so as per the rule above, and as each missed review is its own 'event', with the OACs being charged in advance, any complaint about reviews that took place or should have taken place before June 2018 (which is more than six years before Mr D made his complaint) has potentially been referred to us too late. So next I must consider the second part of the rule above which is whether Mr D became aware, or ought reasonably should have been aware, that he had cause for complaint against SJP more than three years before he referred his complaint to this service.

Looking at the information provided to Mr D in 2014 when his relationship with SJP began there appears to be no reference to SJP's commitment to carry out regular annual reviews of Mr D's investment. However, each suitability letter from 2015 onwards which was produced when Mr D made new investments or changes to his investments did mention the reviews would be carried out. As the years went on the language used when referring to the regular reviews of Mr D's investments became more specific with the suitability letters from 2016 saying that “as part of my ongoing service I will arrange to meet you on an annual basis for a full financial review”.

I am satisfied that these letters were received by Mr D therefore, in my view it is reasonable that he would have known from each of these letters that he should have expected a review meeting each year. Furthermore, the illustration and the other documents provided to Mr D when he added to his investments over the years also made it clear that he was paying a regular and specific charge for this particular service.

Therefore, I am satisfied that Mr D ought reasonably to have known he should have had annual reviews so when one didn't take place I think he ought to have known he had a cause to complain about this, or at the very least within three years from the point one was missed and within three years of each missed review until 7 June 2018 which then falls within the first limb of the rules set out above.

The rules say I can consider a complaint that's been made too late, if I'm satisfied the failure to comply with the time limits is due to exceptional circumstances. But I've seen nothing to suggest this is the case here. So in line with the rules above, which I must follow, I see no reason why Mr D couldn't bring his complaint within the required timescale.

Turning now to the reviews that did or should have taken place from 7 June 2018 onwards, as mentioned earlier in this decision the ISA was transferred away in June 2018 so from 2018 onwards only the RA should have been subject to an annual review. And as per the documents provided to Mr D the reviews of the RA should have taken place annually and would be initiated by the adviser around the same time each year following the first anniversary of the inception of the plan.

I am satisfied that reviews of the RA were carried out as they should have been in the years 2018, 2019 2023 and 2024.

However, as already detailed, the investigator upheld this part of the complaint based on the fact that there was no evidence to confirm that SJP had carried out the reviews for the years 2020, 2021 and 2022. I am pleased to see that SJP agreed with the investigator's assessment to refund the charges Mr D has paid for the missed reviews. So in light of this there is little point in me making any further findings on the issue apart from to say that as SJP didn't carry out these reviews the charges paid in advance for them must be refunded to Mr D using the method detailed below.

Putting things right

In assessing what would be fair compensation, my aim is to put Mr D in as close as possible to the position he would probably now be in if he hadn't paid ongoing adviser charges for the years noted above.

SJP should repay the adviser's fees, adjusted for growth had the fees remained in the existing investment funds, from the date the fees were paid to the date of settlement. SJP should pay into Mr D's pension plan, to increase its value by the amount of the compensation. The payment 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.

SJP must also pay Mr D the £150 suggested by the investigator for the distress and inconvenience caused to Mr D.

If SJP is unable to pay the compensation into Mr D's pension plan, the amount should be paid directly 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 D won't be able to reclaim any of the reduction after compensation is paid.

The notional allowance should be calculated using Mr D's actual or expected marginal rate of tax at his selected retirement age.

It's reasonable to assume that Mr D is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr D would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

SJP must provide the details of the calculation to Mr D in a clear, simple format.

My final decision

For the reasons set out above I uphold this complaint. I direct St. James's Place Wealth Management Plc to pay Mr D the redress using the method set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 11 December 2025.

Ayshea Khan
Ombudsman