

## The complaint

Mrs C complains that St. James's Place Wealth Management Plc (SJP) failed to provide the annual ongoing advice reviews as promised to ensure her investments remained aligned to her objectives. She also complains that SJP continues to hold some of her invested money in its suspended (and now in wind down) property fund. Mrs C wants these funds transferred to her investment provider as soon as possible.

## What happened

The following is a summary of the circumstances and key events leading up to the complaint to provide some context.

Mrs C became a client of SJP in 2017. In a suitability letter of 15 November 2017, SJP recommended Mrs C transfer and invest around £139,000 from an existing investment ISA and investment bond held with other providers, to a SJP investment ISA and unit trust feeder. SJP also referred here to its ongoing advice service and said it would provide Mrs C with an annual review of her circumstances and investment to ensure things remained appropriate. This service cost 0.5% of the value of her investments a year.

Mrs C's objective or priority for the investment was recorded as wanting to accumulate accessible savings over the medium to long-term to be used for her future and to build her overall wealth. Mrs C's attitude towards investment risk was assessed as being 'Medium' and SJP recommended she invest her funds in its Balanced Income Portfolio, which it deemed was suitable for her level of risk.

In the accompanying illustration document, this showed that the portfolio was made up of nine underlying funds, comprising equity- based funds, bond funds, and a property fund.

Mrs C accepted the recommendation and the investment went ahead.

In December 2017, Mrs C invested a further lump sum of around £11,000, plus a regular monthly contribution of £300, to her unit trust feeder. This was invested in SJP's Balanced Portfolio to match Mrs C's 'Medium' attitude to risk. The accompanying illustration document shows this comprised 11 underlying funds of a broadly similar nature to the other portfolio, including the property fund.

In September 2018, SJP carried out an annual review with Mrs C, which was documented in a follow up letter of 22 October 2018. In summary this said Mrs C's circumstances had been discussed along with her investments performance and attitude to risk, which remained the same.

The outcome of the review was that while the performance of the Balanced Income Portfolio was poor, it was more closely matched to Mrs C's attitude to risk and that capital preservation was a greater desire than growth. No changes to the portfolio were recommended here, but it was suggested a review of the Balanced Income Portfolio might be appropriate at the next review.

On 24 January 2020, SJP carried out an annual review, which was documented in a follow

up letter of 10 February 2020. The letter followed a broadly similar format as before. In summary the review concluded that, while Mrs C had concerns about the performance of her portfolio, she didn't want to increase the risk in search of growth. So, it was agreed it was still suitable for Mrs C to remain invested in the Balanced Income portfolio.

The next review meeting took place in November 2021. In a letter of 17 November 2021, the outcome of the review was that, while Mrs C's attitude to risk remained the same, a fund switch was recommended replacing one bond fund with an equity income fund. Other points of note here were that Mrs C intended to keep working, she was in good health, she felt her attitude to risk and investment outlook would remain the same into her retirement (after she reached age 60), she wanted to withdraw a lump sum for personal use, and she would be in contact within the next three months for advice because she was due to inherit some money.

According to SJP's records, Mrs C had a phone conversation with SJP on 26 April 2022, in relation to her inherited money. And following the call, in a suitability letter of 4 May 2022, SJP recommended Mrs C invest £25,000 split between her ISA and unit trust feeder, to maximise her ISA allowance. It was noted that Mrs C was a 'Medium' risk investor as before. SJP recommended investment in a bespoke Balanced Income Portfolio, replacing the bond fund with the equity income fund as previously actioned in November 2021. As before, the portfolio contained a 15% investment allocation to the property fund.

The next annual review was documented in a letter dated 30 June 2023. The outcome of the review was that Mrs C remained a 'Medium' risk investor and no changes to her investments were recommended, with agreement that it was suitable for her to remain invested as she was for the medium to long term. Of note, the letter said Mrs C was likely to retire within the next two years, and she wanted to stop her regular monthly investment contributions because she wanted to build her cash savings as interest rates were relatively high.

In October 2023, SJP suspended trading in its property fund because it couldn't meet the significant number of withdrawals experienced without selling the underlying assets at a substantial discount.

In April 2024, Mrs C transferred her investments to a new provider. And around the same time, she complained to SJP raising the points I set out at the start.

SJP replied and upheld the complaint, in part. It said, while there was evidence to show that annual reviews took place in 2018, 2020, 2021, 2022 and 2023, it apologised no review was carried out in 2019. And it offered a refund of fees paid plus interest. It also offered £150 for the distress and inconvenience caused. It said unfortunately the property fund remained suspended and it had no update on when things would change.

Because Mrs C remained dissatisfied, she referred her complaint to us.

Shortly afterwards, SJP notified Mrs C that it had taken the decision to wind down its property fund. It believed reopening trading would likely lead to substantial withdrawals forcing it to suspend trading again. So, it said it would now focus on returning investors' money, but this would likely take some time.

One of our investigators considered Mrs C's complaint, and they ultimately upheld it, in part. In summary they said, in relation to the property fund, the amount Mrs C invested was appropriate and relevant risk warnings were given in the advice paperwork she was given at the relevant times. They said SJP had the right to suspend the fund to protect investors – the position was unfortunately down to market conditions. So, they concluded SJP hadn't done anything wrong here.

Turning to the ongoing servicing element of the complaint, they said it was not in dispute that SJP failed to carry out an annual review in 2019, so there was nothing more to consider here. They said they were satisfied the evidence showed reviews did take place in 2021 and 2023. But they said the meeting or discussion held in 2022 did not constitute an annual review. They said the suitability report only covered the new investment – there was no reference here to the existing investments and why they remained suitable for Mrs C, which is what they would expect to see. They believed this advice was an extension of the advice given in November 2021. So, they recommended SJP refund the ongoing fees Mrs C paid for the missed 2019 and 2022 reviews, plus interest. They explained the lost growth on the fees would normally be based on the investment returns of the funds the fees were taken from. But they said adopting an 8% simple interest approach instead was a pragmatic and fair resolution in the circumstances.

SJP disagreed. In summary it believed the new investment suitability letter and fact find completed was enough evidence to demonstrate a review took place in 2022. It said Mrs C's circumstances were assessed at the time of the new contribution, and the fund selection and her attitude to risk were discussed. It said the adviser would not have increased funds in an account that they did not believe was suitable.

The investigator wasn't persuaded to change their opinion, so the complaint was referred to me for a final decision.

### **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.

Having done so, I've decided to uphold this complaint, in part, for broadly the same reasons as the investigator. My reasons are set out below.

### **Property fund – suspension and wind down**

Mrs C is understandably concerned that her funds are still tied up in SJP's property fund, which she cannot access and transfer to her new investment provider. Mrs C has not explicitly complained that the advice she received from SJP, which led to the part investment in this fund, was unsuitable. But she has said in her complaint submissions that SJP tied up her funds in a property account without her agreement and knowing she wanted access to the funds from age 60. Because of this, I have considered the appropriateness of the fund as part of the investment recommendation SJP made.

Having done so, like the investigator, I think the inclusion of the property fund as part of Mrs C's investment portfolio was appropriate in the circumstances. I say this for the following two key reasons.

Firstly, Mrs C's investment objective recorded in the advice paperwork at the outset was that she wanted to build her funds over the medium to long-term to be used for her future and to increase her overall wealth. And continued reference to investing over the medium to long-

term featured in the ongoing advice Mrs C received. I've seen no evidence to show or suggest Mrs C told SJP she wanted access to her money from age 60 or that it was reasonable for SJP to have assumed this was the case. In the annual review follow up letter, reference was made to Mrs C wanting to invest for at least the next five years. And as late as June 2023, the follow-up annual review letter referred to Mrs C's investment as still being medium to long-term. So, I'm satisfied Mrs C's investment time horizon was medium to long-term in nature.

Secondly, Mrs C's attitude to risk was assessed at the outset as being 'Medium' and this continued to be the approach Mrs C adopted throughout. Combined with a medium to long-term growth objective, I think this meant it was suitable for SJP to include property as an asset class within its investment portfolio recommendation. In my view it is important to invest in a diverse range of investments to reduce and spread investment risk, which is what I think the portfolio recommended sought to achieve. The 15% allocation of Mrs C's invested funds to the property fund was, in my view, reasonable.

So, for these two key reasons, I'm satisfied it was not wrong of SJP to include its property fund as part of the investment portfolio it recommended to Mrs C and continued to recommend as being suitable for her on an ongoing basis. I'm also satisfied Mrs C accepted the recommendations each time, so she agreed to invest as recommended.

Turning to the risk disclosure – I think SJP adequately disclosed the risks involved with the investment, including the property fund. Within the suitability letter of November 2017, under the heading 'Risk Factors' reference was made to the 'Understanding the balance between risk and reward' document Mrs C was provided with. And this explained the risk factors associated with the various asset classes, including property risk. I can also see that when Mrs C invested further money in 2022, the suitability letter made explicit reference to the potential illiquid nature of the property fund and that Mrs C might not be able to access her funds on demand. It said: 'The Property Fund invests mainly in assets which can be difficult to sell at short notice, so you may not be able to sell or switch out of this investment when you want to – we may have to delay acting on your instructions.' So, I think Mrs C was reasonably made aware of the risks involved in the recommended investment and the specific nature of the risk involved in investing in property.

Ultimately, as the investigator explained, SJP was entitled to suspend the fund given it was unable to meet the number of withdrawal requests without causing detriment to the remaining investors. It was done to protect the interests of its investors. And similarly, it hasn't done anything wrong or acted unfairly or unreasonably, in my view, by taking the decision to wind down the fund. Again, I think this decision was taken in the wider interests of its remaining investors. Unfortunately for Mrs C, this means she will have to wait to receive her funds while the sale of the assets and the wind down process takes its course. I have no influence over the speed of this process, and I cannot direct SJP to repay Mrs C's funds sooner.

I know this isn't the answer Mrs C was hoping for – but I don't uphold this part of her complaint.

### **Ongoing advice reviews**

Mrs C was paying an ongoing advice fee of 0.5% for which SJP said it would provide an annual suitability review of her investments. Mrs C took out her investment in November 2017, so the reviews ought to have taken place broadly around the anniversary.

I'm satisfied from the evidence presented and as I described in the section above, a

suitability review of Mrs C's investments took place in 2018. It's not disputed that no review took place in 2019, so Mrs C should receive a refund of the fees paid. SJP accepted this and it formed the basis of its offer of compensation as set out in its final response letter. Because there's no dispute about this, I don't think it is necessary for me to consider this further.

The next review took place in 2020. Given the timing of the review, it could be argued that this was a late 2019 review, and it was the 2020 review due later in the year, which was missed. But a review happened, and it covered what I would expect to see as I set out in the section above.

The same goes for 2021 and 2023. I consider the follow up documentation shows a clear and explicit reference to reviewing the performance and suitability of Mrs C's existing investments along with her circumstances, her future plans, and her attitude to risk. Again, the kind of detail I would expect to see.

The main area of dispute concerns what happened in 2022. In April 2022, Mrs C invested an additional lump sum following SJP's advice. Mrs C says this wasn't a review meeting and the advice was prompted by her. And our investigator ultimately agreed that a review did not likely take place. SJP believes it is reasonable to conclude a review did take place. Its main argument is that, while the advice was in relation to a new investment, the adviser reviewed Mrs C's circumstances and attitude to risk, and would not have recommended funds be added to the existing plan if they didn't think it was suitable.

I've thought about this carefully. Having done so, I'm not persuaded that what took place here can reasonably be described as an annual review in line with the service Mrs C agreed to pay SJP a separate fee for. The purpose of this advice was very clearly a recommendation to add new monies to the investment – monies Mrs C told SJP a few months earlier she would receive and that she would be in touch for advice.

I accept the suitability letter refers to Mrs C's circumstances, objectives and attitude to risk having been discussed. I understand SJP also updated a fact-find document. But the purpose of gathering this information only appears to have been to recommend a further investment. Mrs C's existing investments were quoted in the suitability letter – SJP says with updated values. But unlike the other annual review follow-up letters, there was no explicit or specific reference to her existing investments, how they had performed, Mrs C's views on their performance, an update on her future plans including her views on continuing working, and crucially nothing was said here as to why her existing investments remained suitable. In my view, the assumption that they remained suitable because the adviser added to them, is not enough here.

I accept the annual review didn't have to be documented or formatted in a set way. But I think there ought to be some direct and specific reference to the product that was apparently being reviewed, for this letter or report to reasonably be said to support a review having taken place.

I'm mindful too that a copy of SJP's internal records of the meetings carried out and interactions with Mrs C, records the April 2022 meeting type as 'ad hoc'. Whereas the other review meetings say, 'Review meeting.'

If the adviser had deemed a review had taken place here, I think it's reasonable to expect this to have been reflected as such in its records.

So, taking everything into account and in the particular circumstances of this case, I think the recommendation in 2022, was a separate event to the ongoing advice review that SJP ought to have carried out in exchange for its 0.5% annual charge. I'm not suggesting the review had to be carried out in an entirely separate meeting – it could have been conducted as part

of this further investment advice. But I think SJP needed to demonstrate much more clearly these two separate events took place, which it has not done here.

For the sake of completeness, I've seen no other evidence to show that SJP invited Mrs C to a review meeting, or that one took place, at any other time in 2022.

As a result, I'm not persuaded there is enough here to reasonably demonstrate Mrs C received the review in 2022 she ought to have done – I'm not persuaded she got what she paid for here, so I think these fees should also be refunded along with the 2019 fees.

## **Summary**

In summary, my findings are as follows:

- It was suitable for SJP to include its property fund as part of the recommended investment portfolio for Mrs C.
- It was fair and reasonable for SJP to suspend, and then later wind down, the property fund to protect investors' interests.
- In addition to the missed annual review in 2019, SJP has not provided enough evidence to demonstrate that a review took place in 2022 as part of the additional investment advice.
- There is no other evidence of a review having been offered or provided at any other time in 2022.
- Mrs C should receive a refund of the ongoing advice charges she paid for the reviews not provided.

I therefore uphold this complaint, in part, and instruct SJP to put things right.

## **Putting things right**

For the reasons I've explained, I think SJP failed to provide the agreed ongoing review service in respect of Mrs C's investments in 2019 and 2022. I think Mrs C should receive a refund of the ongoing advice fees she paid in respect of the reviews not provided. Mrs C should also receive a return on the refunded fees. While the recommended return of 8% simple interest a year might not exactly match the position had the fees not been taken for the periods in question (as the investigator explained in their assessment) in my view, it represents both a fair and pragmatic resolution in the circumstances. So, overall, I think this approach represents fair compensation for Mrs C.

SJP should therefore do the following:

- Refund the ongoing advice fees Mrs C paid for the missed reviews identified in 2019 and 2022. SJP should adopt the principle here that the reviews were due in November each year and the reviews were paid in advance – i.e. the preceding 12 months' of fees were the ones relevant to an annual review.
- Add 8% simple interest per year on the fee amounts from the date they were paid to the date of my final decision.
- In line with its offer, pay Mrs C £150 for the distress and inconvenience caused. I think this is a fair award to acknowledge the trouble and upset this matter has caused Mrs C.
- Pay the compensation due directly to Mrs C.

- Provide Mrs C with the details of the above calculation in a clear, simple format.

Income tax may be payable on any interest paid. If SJP deducts income tax from the interest, it should tell Mrs C how much has been taken off. SJP should give Mrs C a tax deduction certificate in respect of interest if she asks for one, so she can reclaim the tax on interest from HMRC if appropriate.

### **My final decision**

For the reasons above, I've decided to uphold this complaint, in part, and I instruct St. James's Place Wealth Management Plc to put things right in line with the approach above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 29 December 2025.

Paul Featherstone

**Ombudsman**