DRN-4079238

The complaint

Ms and Mr B ('the complainants') say a partner of St. James's Place Wealth Management Plc ('SJP') gave them unsuitable advice in 2021 to invest in an SJP International Investment Bond ('IIB'), and delayed the investment [issue 1]; denied them, at the time of advice, full and transparent information about the IIB and about the costs associated with the recommendation [issue 2]; unduly pressured them to follow the recommendation [issue 3]; mishandled their complaint [issue 4].

The complainants say but for issues 1, 2 and 3 they would not have followed the recommendation. SJP disputes the complaint.

What happened

The complainants invested in the IIB in November 2021. In August 2022 they complained to SJP, and mainly said:

- They had an online/zoom meeting with the partner in October 2021, during which they discussed investing £300,000 (the 'capital') that was shortly to be liquidated from a property sale. They shared their plan to retire abroad in around five years, so this led to a discussion about offshore bonds, which they had no previous experience of investing in. They also disclosed that they were yet to use all their Individual Savings Account ('ISA') allowance for the year, but the partner advised against making any further UK based investments (including in the ISA) given their plan to move abroad.

- By early November the capital had been received and they informed the partner of this. On 8 November he asked them to forward the capital, but they resisted doing so because they had yet to receive anything in writing from him about his recommendation. On the same date, they asked for this and he responded by sending his suitability letter (also dated 8 November), a Risk and Reward guide and documentation about the IIB.

- The suitability letter referred to other documents that had not been given to them, but they did not notice this until much later. These were – the services and costs document; the additional information document; the Key Information Document ('KID') and Key Fund Information Document ('KFID'); the illustration document; and another document about understanding risk and reward.

- The partner requested the capital again on 10 November and they felt pressured by this. They had also spotted some inaccuracies in the suitability report. They liaised with him up to 15 November, during which they asked some questions about the recommendation and provided him with information he had asked for about the third assured life for the IIB. On 15 November he sent them an amended version of the suitability letter (with an incorrect October 2021 date). The capital was sent in tranches, the last being on 16 November, but the investment appears to have been unduly delayed until 29 November. On 9 December they received documentation confirming the IIB investment.

- In July 2022 the partner contacted them to verify an approach made to him by another investment broker on their behalf. This was closely followed by his email to them reminding them that they were approaching their second year of holding the IIB – which was inaccurate, as they had held the IIB for only eight months at the time.

- In August he emailed further about the other investment broker's approach and suggested to them that they obtain full information from the broker about the total costs of the investment solution it was recommending. It is at this point that they realized they had not received such full information about the total costs of the partner's IIB recommendation in 2021. Soon thereafter they also realized that they had not received the additional documents mentioned in the suitability letter. They seized the opportunity to ask him for the information and documents. In response, he provided the information and documents, and they considered their contents.

- They then learnt that they had been misled on the effect of fees/charges on their investment – they were told the total fees would initially be high but they would then become competitive by the end of five years, but the information showed this would not be the case until after 10 years, which was far beyond their investment horizon of around five years. The KID said the IIB should be held for 15 years, they were not told this in 2021 and this too conflicted with their investment horizon. They also became aware of an early redemption penalty that applied within the first five years of holding the IIB, which was not disclosed at the points of advice and investment.

SJP has shared, with us, input directly from the partner.

With regards to the background, he mainly said – the zoom meeting with the complainants on 10 October 2021 was followed by a face-to-face meeting with them at their home on 17 October; he attended that meeting with documentation related to his advice; the only amendment to the illustration document thereafter related to the additional assured life; both sides agreed to await arrival of the capital before further action; and that happened quicker than expected, whilst the suitability letter was being finalised.

In terms of his recommendation, he mainly said – the suitability letter reflected information he had been given; the Total Expense Ratio associated with his recommendation was competitive in comparison to what could have been incurred if the IIB investment was advised by other firms; he refutes the allegation that he placed the complainants under pressure; their claim that the early redemption penalty was undisclosed (at the time of advice) is untrue; the IIB is an open ended long term investment so there was no particular need for it to be cashed in after they left the UK; and, as they know, the IIB's returns would have been tax-free in the country they were going to for 10 years.

SJP also issued its response to the complaint. Its overall position on the complaint is mainly as follows:

- The complainants were given suitable advice and they were fully informed about the advice.

- The partner recorded the complainants' overall circumstances as they were presented to him. This included, as recorded, their professions; their earnings, expenditure, assets and liabilities; their medium risk profile; and their investment experience.

- The suitability letter confirms that the additional documents (mentioned within the

letter) were provided to them. The letter also set out their objective for an offshore held investment, the five to 15 years investment horizon, and the reasons underlying both.

- The complainants were put in a fully informed position. This also included the illustration presented to them in the meeting of 17 October (which was subsequently updated and re-issued to them) and the documents attached to the partner's email of 8 November. In their response of 10 November, the complainants confirmed they had *looked at everything*, and it is reasonable to expect clients to read and understand such information before proceeding further. Thereafter, on 29 November SJP's administration centre sent them the investment confirmation letters alongside the IIB's schedule and terms and conditions. Its letter also referred to how important those documents, the KID, KFID and the other documents they should have received were, and that if they needed any further copes they should say so. They did not ask for any missing documents at the time.

- Between the engagements in early October and the capital payment on 16 November, they had ample time to properly consider and reflect on the advice they had been given, and to raise any concerns they had.

- After receipt of the capital on 16 November, the IIB investment application was made. Even though it took its administration centre around 10 days to process the new business, the investment was executed on the unit price valuation point of 17 November, so there was no financial detriment arising from the processing period.

- There was sufficient dialogue between the complainants and the partner about charges (including the early redemption penalty), in which the charges were explained. The complainants' complaint submissions confirm that charges were discussed before they invested. The terms and conditions and illustration documents they received also addressed charges (including the early redemption penalty).

- Available evidence, including the sequence of events and input from the partner, does not support their claim that they were pressured into the IIB investment. They had notice of their right to cancel within 30 days. Evidence also does not support their claim about the investment horizon being limited to five years. The suitability letter made clear that the basis for advice was the horizon of five to 15 years, and there was no requirement to liquidate the IIB after five years.

One of our investigators looked into the complaint and concluded that it should not be upheld. He was not persuaded that the partner's advice was unsuitable or that the complainants were uninformed about the details of his recommendation, and shared his reasons. The complainants disagreed with this outcome and asked for an Ombudsman's decision. They say the investigator's findings were wrong in some parts and misguided in others, and some of their responses relate this.

In terms of their case, they maintain that the partner's records of their profile at the time of advice (including the status of their ISA allowances) contained significant errors; that they did not see his factfinding notes and they did not take issue with the ISA related misinformation in the suitability letter because they relied on his verbal advice; that their objective was for growth within five years, the partner was aware of this and email evidence shows this; that even though the partner informed them they could continue to hold the IIB after five years they also expected that they would have to reinvest its capital; that charges were discussed only in general terms and they were assured that whilst high at the time, they would be lower after five years; that the charges presently remain confusing for them

and had they known at the time that the charges were difficult to understand that could have led them to avoid SJP's service altogether.

The complainants also shared with us comments and submissions about documents they received from SJP this year, in response to their Data Subject Access Request ('DSAR').

The matter was referred to an Ombudsman. In this respect, the complainants also requested as follows –

"*Please can you refer this matter and all supporting evidence to the Ombudsman to make a final decision that, on the balance of probabilities, there is no evidence to indicate that we were given an illustration of fees and other supporting documents until August 2022 and that if we had been given all relevant information at the outset we would have understood that, notwithstanding our discussions with the Agent, the investment needed to be held for a minimum of 10 to 15 years for us to see a proper return, in which event we would have looked elsewhere to invest. Incidentally this would have involved putting around £30,000 into ISAs in November 2021, if we had been advised correctly*." ['*request A*']

"*We would also like the Ombudsman's thoughts on the Agent's behaviour throughout our dealings, including his e-mail of 26 July 2022 … We would also like confirmation that the Agent's e-mail of 24 August 2022 explaining the SJP fees is correct and the Ombudsman's thoughts on the complexity of the SJP fees.*" ['*request B*']

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 do not uphold the complaint.

Issue 4

I refer to this issue first in order to clarify that it is beyond my remit.

I can determine complaints about regulated activities, like the investment advice activity conducted by the partner in this case. However, complaint handling, on its own, is usually distinct, it is not a regulated activity and it is not an ancillary activity connected to the conduct of a regulated activity. We do not have jurisdiction to address, in isolation, matters about complaint handling.

In some cases, it might be that a complaint to a firm and the alleged mishandling of it forms a part of the substantive case. For example, where the alleged mishandling of a complaint is said to have added to the substantive problem. In those types of cases, addressing the firm's complaint handling might be a necessary part of determining the overall complaint. This is not so in the present case. SJP's complaint handling is indeed distinct from the substantive complaint. The complaint handling process started from, or after, the complaint in August 2022, but the allegations in issues 1, 2 and 3 (in other words, the substantive case) relate to events in 2021, so the former is not a part of the latter.

For the above reasons, I will not be addressing issue 4.

Request A and Request B

Before addressing the substantive case, it is worth responding to these requests, because I wish to explain why I do not grant the first and what my approach will be for the second.

Request A, as quoted above, presents a set of submissions by the complainants which they would like me to agree with. It essentially sets out the decision they want me to make. I acknowledge that they are entitled to make submissions in support of their case and to set out the type of decision they want, but my role is to determine their complaint independently and fairly. As such, I have reached my own conclusions on the basis of my own considerations and findings. I said above that I do not uphold the complaint, so it follows that unfortunately for the complainants I will not be delivering the decision they want.

With regards to request B, my findings on the partner's role in the case and on SJP's fees (or the fees/charges associated with the partner's recommendation) will sit in the context of issues 1, 2 and 3. In addition to issue 4, these are the complaint issues that were raised to SJP and that were referred to us. As such, and with the exception of issue 4 (for the reasons given above), these are the issues my decision address.

The complainants' DSAR related comments

I have considered these, but I find that, in the main, the complainants have essentially referred to some information derived from, and learnt about through, the DSAR disclosure in support of their complaint. I acknowledge this, but I do not need to make findings on the DSAR disclosure, and I do not. My task is to determine the complaint.

Issues 1, 2 and 3

I consider it helpful, at the outset, to distil the main disputes in these issues.

With regards to issue 1, investment advice can be unsuitable for different reasons related to different aspects of the advice. Generally speaking, firms have a regulatory duty to know their clients' circumstances and to give investment advice that matches and is suitable for those circumstances. Those circumstances mainly relate to the client's objective(s), risk profile, investment experience, financial circumstances (earnings, assets and liabilities), and affordability status (including capacity for loss).

Issue 1 is focused. The complainants have not alleged a mismatch between the IIB and their risk profile, investment experience, financial circumstances or affordability status. I have considered these aspects of their case and have not found grounds to say the IIB mismatched any of them.

Their wish to invest the incoming £300,000 capital was predetermined before the partner's involvement. The idea of an offshore investment, irrespective of who initiated it, was arguably inevitable given the nature of their retirement plans, and that led to consideration of the IIB. In that context, in general and given the international characteristics of the IIB, its consideration was not automatically unsuitable.

However, their case is that the IIB mismatched their objective on the following specific grounds – that, unknown to them, it never stood a change of delivering the growth they sought in *five years* because the charges during that period were bound to erode any such growth; and that, unknown to them, they had to be committed to the IIB for 10 to 15 years for the prospect of such growth, but that conflicted with their *five years* investment horizon. They have referred to errors in the partner's summary of their circumstances, but they have done so mainly to support their claim about unsuitable advice, so the matter of unsuitability remains the key issue to address.

I am aware that a part of their submissions referred to an ISA related issue, but they have also said that it is not a part of their complaint because their claim in this respect "cannot be

corroborated". I consider this a sensible approach, and I have not treated this matter. Their claim is that the partner was wrong in failing to advise them to use existing capacity within their ISAs, but available evidence is that the partner was informed that no such capacity existed. He presented this understanding to them in the suitability letter and, as they have admitted, they did not correct it. On this basis, I can understand their concession about the claim lacking corroboration.

Issue 1 is about the alleged mismatch between the IIB and the complainants' reference to a five years investment horizon. Issue 2 alleges that they were denied full and proper disclosure by the partner (especially with regards to charges associated with the IIB recommendation) that would have brought the alleged mismatch to their attention and would probably have led them to decline the recommendation. Issue 3 alleges that they were unduly pressured to follow the recommendation.

I address issues 1 and 2 together because they are inextricably linked. Overall, on balance and based on available evidence, I am not persuaded that key information about the IIB recommendation (including charges) was withheld from or unknown to the complaints, and I do not consider that the recommendation mismatched the objective agreed between them and the partner.

There is no dispute that they received the suitability letters on 8 and 15 November. Both letters refer to their overseas retirement plan and how that plan led to consideration of the IIB. As SJP says, they also referred to the objective for capital growth over the "medium term", defined as "5 to 15 years". An appendix to the letters included the following notice – "*An Early Withdrawal Charge will apply to money withdrawn from your International Investment Bond within five years of being invested*".

As both parties have mentioned, emails were exchanged with the partner around the time the suitability letters were issued. On 10 November the complainants queried whether (or not) the IIB had to be encashed at the point they retired abroad. The partner replied on 11 November and said the IIB can continue after their move abroad.

There is also no dispute that the complainants received the SJP investment confirmation letters of 29 November. One confirmed the investment (and the 17 November valuation point), and the other attached the IIB's schedule and the terms and conditions document. By this point the investment was made, but the complainants were still within the 30 days cancellation period. They did not cancel the IIB.

The second section of the terms and conditions said – "*The Bond will continue until you withdraw all the money from it, or all the Lives Assured have died and the Death Benefit has been paid*". The fourth section of the document gave information about withdrawing from or liquidating the IIB, including another reference to the Early Withdrawal Charge ('EWC'). A further section of the document was dedicated to charges, which made yet another mention of the EWC. In it, reference was made to "*an Annual Management Charge of 2.25% each year for the first five years of each Investment, reducing to 0.75% each year thereafter*", in addition to the "*costs of managing and maintaining the investments*".

The complainants have said that fees were generally discussed but they were led to believe the higher fees that applied initially would drop and become more competitive after five years.

The sum and balance of the above evidence supports the conclusion that an investment horizon limited to five years was never agreed between the parties, and that the period of five to 15 years (as stated in the suitability letters) was more likely (than not) the agreed

investment horizon. It is probably for this reason that the complainants never corrected both suitability letters' references to this investment horizon.

There is further evidence to support the above conclusion in the documents that the complainants say they did not receive at the time of advice. The balance of evidence says they were probably provided with all those documents (and all relevant documents), and I will explain this finding (with reasons) further below.

However, even based only on what they accept they received and what I have summarised above, there is sufficient ground for the conclusion that they agreed with the investment term of five to 15 years.

If the investment horizon was limited to five years, it is inconceivable that the complainants would have agreed to an arrangement in which, as they knew, charges would adversely impact returns throughout the first five years. Yet, that is exactly what they did, and they did so because, as they accept, they expected the charges to drop significantly *after* five years and for the returns to improve thereafter. This makes it implicit that they were prepared to retain the IIB beyond five years, in order achieve the returns they sought. If the notion of a five years horizon also meant having flexibility to liquidate within that period, that was defeated by the EWC which applied throughout that period. They received multiple notices of the EWC and would not have proceeded if its application was a problem for them.

The email from the partner that I referred to above shows that they knew the IIB could continue in place even after their move abroad, and their response displayed no intention to liquidate it at the point of that move.

I am not persuaded by the complainants' argument that they would have avoided the IIB altogether had they known the associated charges were complex. An Annual Management Charge ('AMC') is a common investment cost and the terms document confirmed that the cost of advice was included in the AMC and the "*costs of managing and maintaining the investments*". The former (the AMC) was defined as 2.25% for five years, reducing to 0.75% thereafter. The latter was defined as –

"… *fees paid to the Fund Manager and various additional costs, such as dealing costs, investment administration fees, custody and safe-keeping fees, the costs of the Investment Committee and its advisers, and VAT. The amounts vary from Fund to Fund, and details of the expected costs are available from your St. James's Place Partner or our Administration Centre. For Funds that invest in collective investment funds, the expected costs we calculate reflect both the direct and indirect costs incurred by the Fund.*"

The points to note are that this [second] element of the overall investment cost was not projected to change after five years and it features fund specific costs which were somewhat unavoidable if the relevant funds were to be invested in.

In other words, there appears to have been sufficient clarity in the information about the AMC element of costs within the terms document, and that element is where the complainants hoped that capacity for better/higher returns would be created after five years. Their receipt of this information at the time of the investment shows they did not have a problem with their IIB's prospects being, partly or significantly, subject to such a fees structure. As stated above, their wider submissions already confirm that they did not have such a problem.

For the above reasons, and on balance, I do not uphold issue 1 and I find that the IIB did not mismatch the complainants' investment horizon.

On balance, I also find that they were not deprived of the documentation that they claim not to have seen. I consider it more likely (than not) that those documents were provided to them. I do not say or suggest that they have been untruthful in stating the opposite. I have not seen evidence that gives cause to doubt their sincerity. However, it appears to be probable that at the point in 2022 that they asked for the documents, they were asking for documents they had previously received but had forgotten they had received. There is some support for this in the fact that they initially disputed the face-to-face meeting of 17 October, then later confirmed that it had indeed happened and that until receipt of evidence related to it they had forgotten it happened. I address other supporting grounds next.

The capital for the IIB investment – £300,000 – is a significant amount of money. The complainants' explanations about their personal circumstances at the time show that whilst it was an affordable outlay for them, it was also a significant and substantial outlay for them. I am also mindful of their professions. This decision will be published and their anonymity must be maintained, so I will not go into the details of their professions. However, it is enough to say that, based on their professions, they were more likely (than not) to pay detailed attention to all the matters surrounding the investment.

In the above context, it is unlikely that they would have allowed, without query, important documents and information associated with the investment to have been mentioned in the two suitability reports but not provided. The same applies to those documents and information being mentioned in the SJP investment confirmation letters. They put questions to the partner in response to the suitability report, but none of them said the relevant key documentation was missing and none asked for those documents to be sent or re-sent.

They had two opportunities in this respect, when the suitability letters were sent on 8 and 11 November. They then had a third opportunity when the SJP confirmation letters were received, around early December. Despite the invitation (within the letters) to do so, they did not reply to ask for any missing documents. One of the letters explicitly said that further copies of the KID, KFID and illustration (amongst others) could be given upon request. They made no such request in response.

Evidence from SJP shows that all documentation relevant to the IIB recommendation and investment were issued to the complainants. As summarised above, their behaviours at the time and wider considerations give grounds to conclude that they probably received those documents at the times they were initially issued.

For all the above reasons, and on balance, I do not uphold issue 2.

In straightforward terms, available evidence does not support the allegation of undue pressure (from the partner and upon the complainants) in issue 3.

There was an online zoom meeting on 10 October, then there was a face-to-face meeting on 17 October, the first suitability letter was received on 8 November, the revised suitability letter was received on 15 November, the capital was sent to the partner the following day (16 November), the investment was not made until 29 November, the complainants received confirmation of the investment in early December and they had the ability to cancel the investment within 30 days.

On balance, the above summary does not depict an investment that was unduly rushed or pressured. The complainants had the benefit of two meetings, a week apart, to discuss their pursuit. They also had the opportunity, which they used, to ask any questions they wanted to ask between the two suitability letters they received. After receipt of the first, they had a week to consider and query anything they wished before receipt of the second, and I have

not seen any conduct from the partner that stopped them from asking even more questions thereafter if they wanted to.

It is their evidence that they did not send the capital on 8 November when the partner asked for it because they did not feel comfortable in doing so (as they had not received information about the recommendation). This illustrates the control over their decision making that they had on this date, and maintained thereafter – as is evident from the fact that they did not send the capital in response to the partner's second request on 10 November because they were still not prepared to do so; and the fact that they sent it on 16 November only after they concluded they had received all the information (and answers to their questions) that they required.

I have considered the partner's correspondence with the complainants during the above period, and I have found no contents that amount to undue pressure from him.

Overall, on balance and for the above reasons, I do not uphold issue 3.

My final decision

For the reasons given above, I do not uphold Ms B and Mr B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B and Mr B to accept or reject my decision before 2 December 2023.

Roy Kuku
Ombudsman