

## **The complaint**

Mr and Mrs F's complaint concerns the service provided to them by a partner of St. James's Place Wealth Management Plc ("SJP").

## **What happened**

The overall background to this complaint will be familiar to both parties, so I won't go over it in detail here.

As a previous complaint by Mr and Mrs F concerning SJP's service provision has already been dealt with by this service, I'll first clarify the specific issues I'm considering in this decision. These are, namely, that SJP's partner failed to:

- Deliver on the basic SJP product promise – specifically that their adviser didn't review their investment portfolio or rebalance it.
- Provide advice on tax efficient investments when requested.
- Inform Mr and Mrs F about initial advice fees.
- Address the impact of not being able to move investments away from SJP without incurring early repayment charges, and the subsequent delay in SJP agreeing that those charges would be waived.

Our investigator looked at these points in detail and found as follows –

### *The SJP product promise*

SJP explained that as part of its ongoing advice service, it would expect its partner to offer a review at least once a year. The investigator said the documentary evidence showed that several meetings had taken place between 2016 and 2018. These covered areas such as pension planning, income provision and inheritance tax planning.

She noted in particular an email exchange following a meeting in February 2018 in which Mr F had specifically mentioned his expectation that his existing funds would be kept under review and changes recommended. The adviser had, in response, confirmed that recommendations for changes would be made if and when warranted.

In summary, the investigator was satisfied that reviews did take place, in line with the agreement between the parties. But she didn't feel that rebalancing of the portfolio was something SJP was obligated to do at every review. She considered SJP's view that the funds were being actively monitored by their managers and that, as such, active recommendations of changes would be made only in certain circumstances, to be reasonable.

### *Provide advice on tax efficient investments when requested.*

This issue related to Mr F's enquiries into the possibility of investing into one or more Enterprise Investment Schemes (EIS) during the 2016/17 tax year. The investigator noted that following a meeting in October 2016 correspondence regarding the matter was ongoing.

At a further meeting in March 2017, during which new Loan Plan arrangements for inheritance tax planning were discussed, it also appeared that information about some EISs was provided to Mr and Mrs F, along with it being highlighted to them that tax relief could be backdated. Correspondence on the matter then continued post April 2017, into the financial new year, but ultimately no EIS investments were made as the availability of products changed.

In summary, the investigator felt the evidence showed that information about EISs was provided to Mr F before the end of the tax year and she felt he therefore would've been able to confirm his preferences prior to that.

#### *Initial advice fees*

This issue related to the aforementioned Loan Plan arrangements prepared for Mr and Mrs F in January 2017. The investigator noted that personalised illustrations had been provided, which had highlighted the charges involved. She explained that it was common for such charges to be applied to a new recommendation even when the money to be invested was already held with SJP. She therefore didn't consider this part of the complaint should be upheld.

#### *The impact of not being able to move investments away from SJP without incurring early repayment charges*

As a result of Mr and Mrs F's ongoing concerns with the service provided to them by SJP's partner, they asked in December 2019 to move their investments to a new provider and that any applicable early repayment charges be waived. SJP initially declined to do this, but upon review did agree to waive the charges, in March 2020. Mr and Mrs F feel that the delay in agreeing to their request incurred them losses relating to the performance of the investments and the suspension of a property fund.

The investigator didn't consider that SJP had been under any obligation to waive the charges. She felt they'd been made clear in the original documentation provided to Mr and Mrs F and correctly applied.

She noted that Mr and Mrs F considered SJP to have breached its contract, so they should've been able to move their investments to a new provider without any penalty. The investigator acknowledged that a general legal remedy for breach of contract was to place the claimant in the same position as if the contract had been performed as it ought to have been. But she felt that the offer of compensation (made by SJP in respect of the previous complaint dealt with by this service) wasn't the same as repudiating the contract entirely. She wasn't satisfied that SJP partner's conduct had deprived Mr and Mrs F of the benefit of the contract they'd intended to receive. She considered that the alleged breach hadn't been serious enough to conclude that it was repudiatory, so she found SJP's offer reasonable in the circumstances.

Mr and Mrs F didn't accept the investigator's view. They said, in brief:

- Theirs had been a bespoke portfolio that should itself have been regularly reviewed. The reviews that did take place related to other products. Any switches that had been made had been instigated by Mr and Mrs F themselves.
- The investigator had mischaracterised the issue regarding advice on tax efficient products, which was specifically that a recommendation wasn't provided to them prior to the 2017 financial year end. They felt it had been contingent on SJP to either advise Mr F to invest in his pension before the year end, which would've preserved

his tax position, or to allow him to invest without restriction as SJP's partner had specifically advised there was no time limit. He had acted as he did because of the partner's advice and in doing so lost the opportunity to invest.

- The issue of initial charges had also been mischaracterised. Their complaint was that fees were charged incorrectly on an existing investment and the investigator had made no comment on the definition of an 'initial investment'. They had in fact been advised there would be no charges.
- In respect of the early repayment charges, their view was that SJP had acted capriciously and incorrectly refused to allow them to move their investments free of the charges when it was in breach of contract. As such, by the time the breach and compensation (in respect of the previous complaint) had been agreed, the value of the investments had fallen by over £50,000. They were therefore seeking recovery of the losses incurred due to the delay in SJP agreeing that it had been in breach (which had not been disputed by the investigator) – they weren't claiming a repudiatory breach and recovery of all costs incurred under the contract. SJP had eventually agreed to waive the charges and pay compensation for its failure to perform the contract, which clearly showed it agreed it had been in breach.

The investigator wasn't persuaded to change her opinion, so the matter was referred to me to review.

### **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I don't think the complaint should be upheld. I'll explain why, referencing the same headings as used by the investigator (although I note Mr and Mrs F's comment regarding mischaracterisation of some elements of the complaint).

#### *The SJP product promise*

It certainly seems that Mr and Mrs F expected more pro-active reviews of the bespoke portfolio that had been put together for them. As noted, the email of February 2018 made this clear. And, indeed, it highlighted their disappointment with a previous adviser who hadn't implemented any changes.

The adviser acknowledged their concern at the time, with the explanation that changes would be made when warranted. But it does seem that no changes were made, other than those instigated by Mr and Mrs F. And there's little to show that active reviews of the portfolio took place. The reviews that were carried out and the associated meetings do appear to have focussed on other areas of financial planning.

But, that said, I don't think the absence of any SJP-instigated changes necessarily means that no consideration whatsoever was given to the portfolio during the period in question. And I have some sympathy with SJP's view that, having been put together on a bespoke basis for Mr and Mrs F, with a presumed medium to long-term investment timeframe, it was unlikely there'd be changes made in the first few years, unless prompted by some fairly significant external factors. SJP has described its approach as looking at 'time in the market' as opposed to 'timing the market' and I think in the circumstances this is a reasonable viewpoint. The recommended funds that made up the portfolio were overseen by fund managers, meaning they'd have been under review on an ongoing basis.

And in any event, as Mr and Mrs F have acknowledged themselves, it's difficult to determine what might've been different about their position if SJP's partner had been more pro-active. It may well have been that, in line with the 'time in the market' approach, no changes would've been made anyway. Or changes that led ultimately to a worse financial position. As such, in all the circumstances, I don't feel I can fairly uphold this point and direct any compensation.

#### *Provide advice on tax efficient investments when requested*

I note Mr and Mrs F's point about the characterisation of this concern – that their complaint is specifically that no recommendation in respect of EIS and/or pension investment was given prior to the financial year end and an opportunity was therefore lost.

Looking at the documentary evidence it's clear that there was an ongoing dialogue on these topics and information was provided by SJP, which confirmed limitations with the EIS approach in respect of what SJP had available. And the dialogue continued past April 2017, with Mr F showing some misgivings with the situation in an email of January 2018, in which he noted the lack of suitable schemes, which he saw as unfortunate given that the original discussions had highlighted the possibility of backdating to the 2016/17 tax year.

But I don't think there's sufficient evidence to support a finding that SJP failed to carry out an explicit request. Mr and Mrs F have suggested a very specific remedy for this issue – amounts that they feel should have put into Mr F's pension and EISs before April 2017. And while there certainly could've been a recommendation made along the lines suggested, I think it's somewhat speculative to now try to determine what that should've looked like. And I'm conscious that the dialogue was ongoing, and that Mr and Mrs F weren't prevented from making an approach to the adviser to explain that a recommendation before the end of the tax year was an absolute requirement.

#### *Initial advice fees*

I've little to add to what the investigator has said on this point. Mr and Mrs F were made aware of the charges by way of the illustrations for the loan plans issued to them. I note there was an indication given that SJP would meet the costs associated with the trusts set up element of the plans. But this was an administrative cost separate to the provision of advice on how the monies then committed to the plans should be invested. Despite the monies coming from existing SJP investments, these were new products and, as the investigator noted, it's quite normal for charges to be applied in such circumstances.

#### *The impact of not being able to move investments away from SJP without incurring early repayment charges*

Clearly by December 2019 Mr and Mrs F had reached a point where they were no longer satisfied with the service SJP's partner was providing. And it seems that this situation had been developing for some time. In all the circumstances I can understand why they felt they shouldn't have to be bound by the early repayment charges in moving away from SJP. It's clear there were service failings by the partner, much of which has been dealt with as part of our consideration of Mr and Mrs F's previous complaint.

But the early repayment charges were applicable to the account. There was no obligation upon SJP to waive them. The eventual offer to do so in March 2020, prompted by a review of the matter, was made as a pro-active attempt to resolve the matter. I can understand why Mr and Mrs F feel this should've been actioned sooner, and if it had been their financial position would be different. But ultimately it was SJP's decision as to whether the request would be met and if so, when.

I don't think there has been any acknowledgement of a breach of contract, and in any event, I make no finding in that respect. My determination of the complaint is by reference to what is, in my opinion, fair and reasonable in all the circumstances of the case. And I'm satisfied that the approach taken by SJP in respect of the early repayment charges was fair and reasonable.

### **My final decision**

For the reasons given, my final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F and Mrs F to accept or reject my decision before 8 September 2023.

James Harris  
**Ombudsman**