

complaint

Mrs Y has power of attorney for Mr G. She complains that St James's Place Wealth Management Plc ("SJP") gave unsuitable advice to Mr G in 2015. She also says she wasn't made aware of the advice, and only found out after the investment had been made.

background

I issued a provisional decision in October 2016 (copy attached), fundamentally upholding the complaint.

Mrs Y responded wishing to make some points:

- The provisional decision contains no reference to the validity of the documentation. She believes the suitability letter was written after the complaint was made. Also, the signature on the client agreement has been added from another document. She asks if we've obtained the original paper documents.
- There is reference to a brochure provided to Mr G at the first meeting. But there was only one meeting where Mr G was present.
- There is no reference to someone of Mr G's age being advised on a "ten-year investment horizon" as a reason for the advice not being suitable.
- In order to put things right, Mrs G assumes the full amount of both funds will be returned together with the change in the nominal value. Also, any charge to reinstate the original funds will be included. The cost of advice up to £300 will be paid by SJP.

SJP also made some further comments. It wished to clarify why its approach to investment management would be beneficial to Mr G:

- Control – SJP ultimately controls and sets the investment mandate for the funds it makes available. This ensures the manager focuses on the area where they are best placed.
- Access to data – as the funds are all managed by SJP, they know all the details and information about the funds at any one time.
- Flexibility – contract law is more flexible than employment law. Using a contracting-out approach allows greater flexibility to replace a manager at short notice. In theory, a manager could be replaced overnight.
- Tangibility – its investment committee does exist and each member is chosen for a specific reason, such as a particular area of expertise.
- Independence – the investment committee contains independent experts. That is, members who aren't directly employed by SJP. So these members have no commercial bias towards SJP. Their role is to review and assess the investment environment in terms of what's best for the investor.
- Psychologist – within the process, SJP employs a behavioural psychologist to sit in at the manager monitoring meetings. The psychologist feeds back to the investment committee where the manager has shown unusual behavioural traits to certain areas of questioning.
- Exclusivity – SJP has an exclusive relationship with an independent investment consultancy firm. This is important as SJP demand a great deal of the firm's time. SJP also has exclusive access to a number of investment managers across the globe.

SJP thinks there are many reasons why a client would consider moving to them. There is rightly a big focus on charges. But this should be considered in the context of value for money. SJP has seen independent analysis that shows its charging structure is competitive with other providers, on a like for like basis. One of the benefits of transferring to SJP is that the performance delivers above average returns over the medium return, net of fees.

my findings

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

I've noted the points SJP has made, and the reasons it's given for recommending that Mr G transfer his investments. I will deal with this aspect of the complaint first, as it goes to the heart of whether Mr G was given suitable advice.

As I noted in my provisional decision, the reasoning for the adviser's recommendation was set out in the adviser's letter. But while it refers to the information contained in the brochure, it goes into little other detail why investing with SJP would be a better option than leaving the existing investments in place. I appreciate the advantages SJP have suggested in its response to the provisional decision may well have been discussed. But in the end the advice should have been based on a tangible benefit for Mr G.

SJP has highlighted the role of its investment committee, and how this distinguishes the approach it takes to other investment managers. But while I understand this point, it remains unclear whether Mr G would be better off in real terms as a result of transferring.

The SJP investments involved a higher level of charges than Mr G's existing funds. SJP acknowledges this point, but argues this should be considered in the context of value for money. It's not clear to me how the new investments offered better value for money than the existing funds.

As the charges would be higher, investment performance would have to be that much better than the existing funds simply to overcome this deficit. It's not clear to me this was discussed to any extent with Mr G.

Also, I've not seen evidence there was any actual comparison between the performance of the investments involved. So it's not clear if Mr G was able to make an informed choice on whether to transfer. Doing so involved some risk, as it was by no means certain the new investment would produce sufficient returns for the transfer to be beneficial.

So while I've given careful consideration to SJP's further comments, they don't persuade me to alter my opinion.

I turn now to the points made by Mrs Y. She asks if we received a paper copy of the documents Mr G is said to have signed. I should explain this service usually receives files from businesses electronically. But I've re-examined the disputed documents. While I understand Mrs Y believes they weren't signed by Mr G, the signatures look as if they have been written in the relevant spaces. On the face of it, the signatures don't seem to have been added afterwards, for instance by transposing them from another document.

I fully appreciate Mrs Y's concerns in this case. And I don't wish to give the impression I dismiss them. But I'm not able to make a definite finding that Mr G didn't sign the

documents. And I can't know for certain how Mr G came to transfer his investments to SJP. But as I noted in my provisional decision, in the end this doesn't have a bearing on the outcome of the complaint. For the reasons outlined, I don't think the transfers were suitable for Mr G. As such, he should be compensated accordingly.

To clarify how the compensation should be calculated, SJP will have to compare the current value of Mr G's investment with the nominal value of the two he transferred from, assuming he'd remained invested. If this shows the value of the previous investments is higher, SJP should pay Mr G the difference. I apologise for not specifically saying this in my provisional decision. I should also clarify that if the value of the SJP investment is higher, there will have been no financial loss and no compensation will be required.

It will be for Mrs Y, acting as Mr G's attorney, to decide what to do with the SJP investment. As it's likely she will incur some costs in obtaining financial advice about this, SJP should reimburse her up to £300.

I note Mrs Y refers to the 5% charge imposed by one of Mr G's previous investment managers. I take it this refers to the bid/offer spread used by some businesses in pricing their investments. This is the difference between the buying and selling price of units in the fund. But while I understand this point, it will be for Mrs Y to decide, presumably with the benefit of financial advice, whether it would be appropriate for Mr G to invest again in either of his previous funds.

my final decision

I uphold the complaint. St. James's Place Wealth Management Plc should compare the surrender value at the date of this decision of its investment with that of the two investments Mr G transferred in 2015 assuming the investments were still in force. If the current value is lower, St. James's Place Wealth Management Plc should pay Mr G the difference.

St. James's Place Wealth Management Plc should also reimburse the cost of any financial advice Mrs Y receives, up to £300, if she wishes to transfer the investment elsewhere.

St. James's Place Wealth Management Plc should pay £250 to Mrs Y in recognition of the trouble and upset it caused by the way it dealt with the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs Y to accept or reject my decision before 30 January 2017.

Doug Mansell
ombudsman

COPY PROVISIONAL DECISION

complaint

Mrs Y has power of attorney for Mr G. She complains that St James's Place Wealth Management Plc ("SJP") gave unsuitable advice to Mr G in 2015. She also says she wasn't made aware of the advice, and only found out after the investment had been made.

background

The complaint concerns an individual savings account (ISA) started by Mr G in December 2015. The capital for this was previously held in two other investments.

The adjudicator partly upheld the complaint. She thought the ISA recommended to Mr G was suitable. But she didn't think SJP had dealt with Mrs Y's complaint promptly. So it should pay £250 for this failing. SJP had agreed to pay this sum.

Mrs Y didn't agree with the adjudicator's opinion. In summary, she said:

- The transfer to the ISA was never discussed during her meeting with the adviser.
- She never received a copy of the suitability letter, nor found the letter among Mr G's post. She questions if this was sent.
- SJP reinvested the funds without her knowledge – she would have advised Mr G not to agree with the sale had she known.
- She in particular finds it odd the adviser didn't inform her of the transfer, although he'd sent every other piece of communication via her.
- SJP knew Mr G was suffering from dementia.
- She thinks Mr G's signature and the date on the transfer form have either been amended or copied from another document.
- Also, she was in communication with the adviser during this time regarding the reinvestment of the dividends of one of the funds which was transferred. So this implies Mr G would be retaining this fund.
- The sum SJP has offered to pay is paltry, and doesn't cover the time she's spent or the stress this matter has caused. It also doesn't compensate for the loss as a result of the transfer of Mr G's investments.

The matter has now been passed to me for consideration.

my provisional findings

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

Mrs Y has made a number of points in the course of this complaint. I think her main concern is the transfer of two of Mr G's investments into an ISA. But she's also complained she wasn't sent a copy of the adviser's suitability report, and that the adviser only dealt with Mr G to set up the transfer. So I'll briefly consider these other areas first.

the adviser's suitability report

The adviser issued a report called a "financial action plan" on 23 November 2015. This was an extensive document, running to 37 pages. There's no dispute this was received by Mr G and Mrs Y. The report set out Mr G's circumstances and attitude to risk. It also set out Mr G's objectives. These were:

- To be more tax efficient.
- To mitigate inheritance tax.
- To consider his long term care options and how these would be funded.
- To protect cash holdings.

The adviser made a number of recommendations. The main one was selling Mr G's share holdings and other investments. The proceeds were to be reinvested in an investment bond. The adviser also said one of his colleagues would be writing separately about the merits of transferring Mr G's ISAs to SJP.

When responding to the complaint, SJP provided a copy of a further letter it said was issued by the adviser. This dealt solely with the transfer of the ISA.

Mrs Y says she didn't receive the letter. And I understand she's not found it among Mr G's papers.

It's not possible for me to know for certain if this letter was issued. It seems odd for the adviser to write to his customers twice on the same day, particularly when the report indicates the transfer of the ISA was still being considered by a colleague. But on the other hand, I have no reason to doubt it was sent.

But whether or not the letter was sent, or received by Mr G and Mrs Y, does not in fact have a bearing on the outcome of the complaint. I will explain this point later in this decision.

the adviser only dealt with Mr G.

An enduring power of attorney had been set up for Mr G in 2003. But it hadn't been registered with the Office of the Public Guardian at the time the transfer of Mr G's ISAs took place. It was only registered in February 2016. So while SJP was aware of the power of attorney, there was nothing preventing Mr G from making his own decisions over his finances or SJP from only dealing with him.

But SJP had also been made aware in October 2015 that Mr G had been diagnosed with mild Alzheimer's disease. She said she'd started the process of getting the power of attorney registered.

In light of this, I think it would have prudent for SJP to ensure Mrs Y was fully involved in any decisions about Mr G's finances. There's a lack of evidence this happened.

But once again I don't think this aspect of the complaint ultimately has a bearing on the outcome. So I'll now consider the crux of the complaint – the advice to transfer the ISAs to SJP.

the transfer of Mr G's ISAs

Mrs Y says transferring the ISA's weren't recorded among Mr G's priorities in the adviser's report. But while I appreciate this point, it doesn't necessarily mean such action was unreasonable. I think the key question is whether the advice to transfer the ISAs was suitable for Mr G, and so I've considered this issue.

In this letter, the adviser listed some additional objectives not included in the other report. These included that Mr G wanted to reduce the burden of administration of his portfolio. And his attorneys would prefer the investments to be in one place. But it's not clear to what burden there was for Mr G to have two separate ISAs.

The adviser also noted Mr G wished to benefit from SJP's approach to investment management. This had been explained in a brochure which had been provided to Mr G at the first meeting.

I've examined a copy of the brochure. This explains SJP offer a "multi-manager" approach to investing, and use a committee to choose investment managers. But it's not clear from this what real benefit there would be for Mr G in transferring his investments.

The report noted there would be a small increase in the annual management charge, compared to the existing investments. So in order for the ISA to produce a better return, it would first have to overcome this difference in the charges.

The adviser noted there was the option of leaving the investments where they were and look to address Mr G's concerns with the current provider. But it's not clear what these concerns were. There's little reference to this except that SJP wouldn't be able to give advice about the investments. Instead, Mr G would need to seek independent financial advice. But apart from this, there seems to be no suggestion Mr G was unhappy with the existing investments. For instance, he doesn't seem to have expressed any disappointment at the performance.

On balance, I don't think there was sufficient reason for Mr G to transfer his ISA's to SJP. It's not clear there was enough benefit to him compared to leaving his ISAs with the existing providers. So overall I'm not convinced this was suitable advice. This is regardless whether Mr G or Mrs Y read the recommendation in the adviser's letter.

putting things right

As I've not seen sufficient evidence Mr G should have transferred away from his existing ISAs, he should be put back as closely in the position as if this hadn't happened. But I think actually reinstating the original ISAs would be difficult, and would require the assistance of the providers. So I think a fair and reasonable outcome would be for SJP to compare the current surrender value of the ISA with the nominal surrender values if the investments had stayed with the original providers.

I appreciate Mrs Y, on behalf of Mr G, may wish to transfer the ISA away from SJP, and will need financial advice for this. So I think it would be reasonable for SJP to reimburse the cost of any financial advice, up to the sum of £300. Mrs Y should submit evidence to SJP of having made such payment to receive this part of the compensation.

SJP had previously offered the sum of £250 for its failings in the way it dealt with Mrs Y's complaint. It should also pay her this sum.

my provisional decision

I uphold the complaint, and propose to award compensation as outlined above.

Doug Mansell
ombudsman