DRN-3412571

Financial Ombudsman Service

The complaint

Mr T complains through his representative, a claims management company (CMC), that he received unsuitable investment advice from St. James's Place Wealth Management Plc.

What happened

Mr T received investment advice from SJP in August 2006. He'd recently come into a sum of money and was looking for advice on how to produce an income in the future, with the possibility of some growth.

SJP assessed him as having a medium attitude to risk (ATR) and advised him to invest £500,000 into an investment bond and £7,000 into an ISA. Mr T accepted their recommendation and the investments were put in place.

The CMC complained to SJP in 2020 about the advice Mr T had received. They said, in summary:

- Mr T had been advised to invest at the wrong time. The sum of money he'd come into represented a significant change to his lifestyle. He'd met with SJP shortly after receiving the money and he wasn't in the right frame of mind to be making important investment decisions at that stage.

- He was advised to invest too much money. The recommendation to invest £500,000 represented too high a proportion of his overall funds.

- He was advised to take too much risk with his money. He was aware that he could lose money, but the funds recommended were too high risk for a first time investor.

SJP investigated the complaint but thought that the advice was suitable for Mr T's circumstances at the time. The CMC didn't agree and asked us to look into the matter. The complaint was considered by one of our investigators who thought it should be upheld. He said, in summary:

- While Mr T had a large amount of funds in his bank account, he was an inexperienced investor and had never invested before.

- He wasn't satisfied that Mr T had a medium ATR and that the recommended funds would have been suitable for him, or that he would have understood or accepted the level of risk they possessed. The funds were invested in 85% equities with around 51% in overseas equities and were subject to significant volatility.

- He thought Mr T should have been recommended funds which had a lower risk profile than the ones recommended.

SJP didn't agree, they pointed to the outcome of Mr T's partner's complaint where an Ombudsman had determined that the recommendation was suitable. They understood that each case was considered on its own merits, but having reviewed the sales documentation

from 2006, it was clear that Mr T and his partner's personal and financial circumstances were largely the same. Therefore, it would seem difficult to comprehend a different outcome on Mr T's complaint where the advice was exactly the same.

They also didn't accept that Mr T's emergency fund of £100,000 was insufficient as it was significantly more than most people had available. He was a new investor but that didn't mean he couldn't take a medium level of risk. This was necessary in order to meet his objective of keeping pace with inflation and providing the level of income required and wouldn't have been achieved with a lower level of risk. Also, when Mr T's high level of cash was considered, his overall position wasn't medium risk.

The investigator didn't change his mind, so the complaint was passed to me to make a 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.

Having done so, I think this complaint should be upheld. I'd firstly like to say that I appreciate the points SJP have made about the similarities between Mr T's complaint and that of his partner's. However, I would say that while their circumstances are similar, they are not exactly the same. I think there is a key distinction between Mr T's circumstances and his partner's - she had twice the capital reserve he did and so had a greater capacity for loss. Therefore, I think it's appropriate that I consider Mr T's complaint in its own right and on its own merits, in all the circumstances of this particular case, as I'm required to do.

With this is mind, I've thought about Mr T's circumstances at the time of the recommendation. He was aged 53, had around £620,000 on deposit and owned his own property worth £90,000 with no outstanding mortgage. He had no outstanding debts or liabilities and was retired, but it was noted that he may return to work. He was receiving around £2,200 net monthly income which appears to be interest from his deposits. His monthly expenditure wasn't recorded but he was looking to invest to produce an income of around £25,000 per annum, with the possibility of some growth.

He was assessed as having a medium attitude to investment risk and was advised to invest in medium risk, mixed asset managed funds. He invested £500,000 in a St. James's Place Investment Bond and £7,000 in a St. James's Place ISA. The Investment Bond was invested equally in the THSP Managed Fund and the GAM Managed Fund. 30% of the ISA was invested in the UK & General Progressive Fund and 70% in the Recovery Fund.

The GAM Managed Fund consisted of around 36% UK equity, 19% European equity, 24% other overseas equity and 21% cash/fixed interest. The THSP Managed Fund consisted of around 23% UK equity, 31% European equity, 36% other overseas equity and 10% cash/fixed interest.

I haven't been provided with fund fact sheets from the time for the ISA investments which isn't ideal, but I haven't seen anything to suggest the makeup of the fund has changed significantly since 2006. The recent fund fact sheets show that the UK & General Fund had a risk rating of 5 out of 7 as it predominantly invests in company shares.

I also haven't been able to find much information about the Recovery fund, but I don't think it's unreasonable to assume that it would have been at least a medium risk fund given how SJP assessed Mr T's ATR and the risk ratings of the other funds that were recommended.

Taking Mr T's circumstances into consideration, I'm not persuaded that the recommendation to invest into funds with such a high equity content was suitable. He needed an income, but he also was unable to replace any large losses on the significant sum he'd invested. The high equity content of the recommended funds meant that their values could fluctuate significantly. I don't think that a modest holding in these funds was unreasonable but the advice to invest the majority of Mr T's capital into them doesn't strike me as being suitable.

There is no record of Mr T having any pension provision and he wasn't due to receive the state pension for another 12 years. So, I think that there needed to be some focus on capital preservation. Given Mr T's lack of investment experience, it was down to the adviser to ensure that he understood the implications of being classified as having a medium ATR and exposing his capital to this level of risk and I can't see that this was done.

I've seen that he discussed the disadvantages of leaving too much cash on deposit, but nothing about the risks of the recommended funds. So, I don't think he was sufficiently aware of the potential significant risks of exposing 80% of his capital to a medium level of risk, compared to a holding a lower risk portfolio with lower potential returns.

It's important to note that while Mr T had an emergency fund of £100,000, he needed his capital to continue providing income for the rest of his life. Therefore, any large falls in the level of his capital would have a fairly serious impact on his lifestyle. On balance, I consider that the recommendation was too risky for Mr T's circumstances. I think that putting him in a position where 80% of his holdings were dependent on risk-based assets was inappropriate.

I appreciate that he needed to take some risk in order to achieve the income he required, but I don't think he was advised of the potential for a less risky portfolio to meet his needs. For example, at the time there were fixed rate bonds paying around 5% interest which could have been used along with the recommended funds to create a more diversified portfolio with less risk to his capital.

Having taken everything into consideration, I don't think that Mr T was in an informed position and I think that on balance, if he had been, then he would have taken a lower risk option. So, I agree with the investigator's proposed method of redress and think that it would be fair to compare the performance of Mr T's portfolio to a benchmark which reflects a lower risk approach.

Putting things right

Fair compensation

In assessing what would be fair compensation, I consider that my aim should be to put Mr T as close to the position he would probably now be in if he had not been given unsuitable advice.

I take the view that Mr T would have invested differently. It is not possible to say *precisely* what he would have done differently. But I am satisfied that what I have set out below is fair and reasonable given Mr T's circumstances and objectives when he invested.

What must SJP do?

To compensate Mr T fairly, SJP must:

- Compare the performance of Mr T's investment with that of the benchmark shown below and pay the difference between the *fair value* and the *actual value* of the investments. If the *actual value* is greater than the *fair value*, no compensation is

payable.

- SJP should also add any interest set out below to the compensation payable.

Income tax may be payable on any interest awarded.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Investment Bond	No longer in force	For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	Date of investment	Date ceased to be held	8% simple per year on any loss from the end date to the date of settlement
ISA	No longer in force	For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	Date of investment	Date ceased to be held	8% simple per year on any loss from the end date to the date of settlement

Actual value

This means the actual amount paid from the investment at the end date.

Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, SJP should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

Any additional sum paid into the investment should be added to the *fair value* calculation from the point in time when it was actually paid in.

Any withdrawal from the SJP should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if SJP totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

Why is this remedy suitable?

I have decided on this method of compensation because:

- Mr T wanted Income with some growth with a small risk to his capital.
- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to his capital.
- The FTSE UK Private Investors Income ***Total Return*** index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is a mix of diversified indices representing different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return.
- I consider that Mr T's risk profile was in between, in the sense that he was prepared to take a small level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mr T into that position. It does not mean that Mr T would have invested 50% of his money in a fixed rate bond and 50% in some kind of index tracker fund. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr T could have obtained from investments suited to his objective and risk attitude.

My final decision

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £160,000, plus any interest and/or costs that I consider appropriate. If I consider that fair compensation exceeds £160,000, I may recommend the business to pay the balance.

St. James's Place Wealth Management Plc should provide details of its calculation to Mr T in a clear, simple format.

Recommendation: If the amount produced by the calculation of fair compensation exceeds £160,000, I recommend that St. James's Place Wealth Management Plc pays Mr T the balance plus any interest on that amount as set out above.

This recommendation is not part of my determination or award. It does not bind St. James's Place Wealth Management Plc. It is unlikely that Mr T can accept my decision and go to court to ask for the balance. Mr T may want to consider getting independent legal advice before deciding whether to accept this decision.

Determination and award: I uphold the complaint. I consider that fair compensation should be calculated as set out above. My decision is that St. James's Place Wealth Management Plc should pay Mr T the amount produced by that calculation – up to a maximum of £160,000 plus any interest set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 6 April 2023.

Marc Purnell
Ombudsman