

## **The complaint**

Mr A's complaint against St. James's Place Wealth Management Plc is about the advice he was given to transfer his pension. He says the new pension has underperformed, there were high fees, including an early withdrawal charge that weren't properly explained, and St. James's Place failed to review or manage it.

Mr A also complains that he wasn't told that he was receiving restricted advice. And that St. James's Place failed to follow his instructions to ensure all his investments had ISA protection.

## **What happened**

Mr A's complaint was considered by one of our investigators. In brief, although she didn't think that the advice given to Mr A to transfer his pension was suitable or in his best interests, she thought that the offer that St. James's Place had made to settle the matter was fair and reasonable in the circumstances.

The investigator noted that the new pension had higher overall charges than the original pension plan. There was also a 6% early withdrawal charge whereas the original plan didn't have this charge. And the existing pension had a large range of different funds available – the new pension had fewer funds to choose from.

The investigator said she'd carefully considered the reasons why St. James's Place had recommended a transfer which included consolidating Mr A's pensions and reducing inheritance tax liability. However Mr A hadn't consolidated his pensions. And the investigator said that Mr A could have switched funds with his existing scheme and this would have met his needs. The investigator didn't think the reasons given for the transfer justified incurring the higher charges associated with it.

Overall, the investigator didn't think St. James's Place should have recommended that Mr A transfer his pension as it wasn't in his best interests. She said that ordinarily she would go onto decide what St. James's Place should do to remedy the situation. However although St. James's Place didn't think it had done anything wrong, it had already made an offer to settle the matter. It said it would compare the actual value of Mr A's pension against an appropriate benchmark. The investigator said that as Mr A had subsequently transferred his pension again to another provider, it was difficult to say how he would have invested but for the unsuitable advice. She thought using a benchmark was reasonable in the circumstances, and in line with what she would otherwise have recommended.

The investigator said St. James's Place had also offered to waive any early withdrawal charges, and cover up to £2,000 of advice fees for Mr A to take independent financial advice. St. James's Place had also offered to pay Mr A £750 for any trouble and upset that had been caused. The investigator went onto consider the other parts of Mr A's complaint.

## **ISA Protection**

The investigator noted that in 2016 St. James's Place had recommended that Mr A invest

just over £16,000 into an ISA and then put just under £19,000 into a 'feeder account' in order to utilise the ISA allowance going forward. She then looked at what had happened in the following years. She noted that Mr A had funded the ISA to the maximum allowance in 2016/17 and 2017/18. The funds in the feeder account had been used in 2018/19, albeit the maximum allowance hadn't been used. In 2019/20 nothing had been invested in an ISA. The investigator noted that Mr A had been given documentation which explained how the feeder account worked. And he'd been sent information about the amounts he'd paid into an ISA each year. The investigator thought that St. James's Place had invested the funds from the feeder account appropriately and had reasonably alerted Mr A when he hadn't used his full ISA allowance. She didn't think St. James's Place had acted unfairly and she thought that Mr A could have invested more if he had wished to do so.

#### Restricted advice

The investigator noted that the Key Facts document that had been given to Mr A had a section headed "Which service will we provide you with?"

It had three sections: Independent Advice, Restricted Advice and No Advice. A tick was placed in the box next to Restricted Advice. This said:

*Restricted Advice – We will advise and make a recommendation for you after we have assessed your needs. We only offer products from a limited number of companies. You may ask us for a list of the companies whose products we offer.*

The investigator noted that it had also given an explanation of what "Independent Advice" was. The investigator thought that St. James's Place's documentation had made it clear that it was providing restricted advice, that this meant it only offered products from a limited number of companies and how this differed from Independent Advice.

#### Fees

The investigator considered the various documentation that had been given to Mr A about fees. She thought that the fees/charges had been explained. She referred for example to the illustration for the ISA that had been sent to Mr A on 31 May 2016 which had set out the charges and how they impacted on the rates of growth. She said the recommendation letter dated 10 November 2017 also said that St. James's Place had provided Mr A with other documents including the "Services Costs and Disclosure Document" during its discussions with Mr A. The investigator thought that the costs of the advice had been made clear and these had been explained in both monetary and percentage terms.

So in summary, the investigator didn't think the advice to transfer the pension was suitable or in Mr A's best interests. But she thought the offer that St. James's Place had made was fair for the part of Mr A's complaint about the pension advice. She didn't recommend that the parts of the complaint about the fees, ISA allowance or restricted advice should be upheld.

Mr A's representative said that Mr A would accept the offer made in relation to the pension transfer. However he didn't agree with the investigator's findings in relation to the other issues he'd raised.

The representative said, in summary, that there was an overarching agreement that all the investments would be held in the most tax efficient way, and if they weren't it should have been mentioned when reviewed.

In terms of the restricted advice, the representative said it wasn't verbally explained, and the written explanation fell short of clarity and completeness. The representative said a beginner

investor shouldn't be expected to understand the implication of the firm only offering products from a limited number of companies. Mr A had understood this meant it was a list of companies that had been vetted and 'hand-picked' for Mr A's needs. Mr A thought the wording of the document was designed to be opaque and ambiguous and could easily have been made clearer.

The representative said the fees were something else that should have been explained verbally but weren't. She said COBS 6.1A.17 required the firm to make their charges clear before giving advice. She said if Mr A was to rely on the written explanation of restricted advice then the document should also predate the meeting in which the advice was given (as per COBS 6.2B.33). She said if Mr A had received all this information in a clear and concise form before he'd met for the investment advice, he would have had an opportunity to understand the fees and type of advice. And all before agreeing to a meeting and being persuaded that actively managed funds were better for him than trackers.

The representative said the 'Key Facts About our Services and Costs' document said the cost of the initial advice and services would be 4.5%. However the investment certificate said the initial charges were 5%. The representative went on to set out a number of reasons why Mr A didn't think the firm had followed the 'client's best interest' rules as set out by the Financial Conduct Authority (FCA).

The investigator responded to say that she thought St. James's Place had advised Mr A on how he could invest in the most tax efficient way. She thought it was then Mr A's responsibility to make investments he wished to make into the feeder account by the 15<sup>th</sup> working day in April each year as had been outlined to him.

The investigator said she thought the fact the advice was 'restricted' had been explained in enough detail. She thought it had made clear that Mr A wouldn't be receiving 'independent' advice. And she noted that Mr A had received advice and information about charges at different stages. But that he then went on to proceed with St. James's Place's recommendations. So she didn't think the evidence suggested that Mr A would likely have acted differently if he'd been given the relevant documentation earlier.

The investigator said on reviewing the documentation she thought Mr A had been informed about the fees being charged on several different occasions; the illustrations, Key Facts about our Services and Costs document and in the recommendation letter.

As a settlement between the parties couldn't be reached the complaint has been passed to me to decide.

### **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've come to the same overall conclusions as the investigator, and largely for the same reasons.

Mr A, through his representative, has queried the reason for the difference in the 4.5% initial advice and services charge outlined in the 'Key Facts About our Services and Costs' document, with the 5% initial charge quoted on the investment certificate.

The firm has said the difference is explained by the 0.5% product charge. It said the overall initial charge was 5%, made up of the 4.5% initial advice and services charge plus the 0.5% product charge.

Looking at the 'Key Facts About our Services and Costs' document, Section 2 states:

*"Neither our advice nor our products are free. You will have to pay us charges for both. The details of these charges will be discussed with you and set out in detail on the personalised illustration we will give to you."*

This Key Facts document explains about the advice charges and then says the information about the product charges was contained in another document, and referred to different documents. The recommendation letter sent to Mr A about his ISA said a Key Investor Information document was enclosed. So that is the relevant document here. Looking at this document, it sets out *"One-off charges taken before or after you invest."* It then sets out the maximum charge on entry but says in some cases it can be less.

We asked the firm if Mr A had been given a document confirming exactly what product charge he would be paying. The firm confirmed he hadn't.

In my view I don't think the difference between the initial charge (5%) and the initial advice and services charge (4.5%) was particularly clear. The firm did say there would be charges for the advice *and* for the product. And that the charges for the product would be set out in another document – the Key Investor Information document. But then that document referred to charges generally and wasn't specific to Mr A. I think the similar terminology used - initial charge and the initial advice and services charge - along with the charges being set out in different documents all meant it needed a very careful reading to appreciate all the details of the initial charge. So on the one hand I understand the confusion, and why Mr A has queried the matter.

However on the other, for the reasons set out by the investigator, I think Mr A was reasonably alerted that there would be a 5% initial charge. Although he may not have been told or appreciated the exact makeup of that charge, I think he ought reasonably to have been aware that it was 5% and he effectively agreed to that charge. I think this is what would likely have been key in Mr A's decision making. I don't think Mr A would have made a different decision about how he invested if he'd been told how the initial charge of 5% was specifically made up.

Mr A's representative has said if Mr A had received all the relevant information in a clear and concise form before he'd met for the investment advice, he would have had an opportunity to understand the fees and type of advice. And all before agreeing to a meeting and being persuaded that actively managed funds were better for him than trackers.

My understanding is that Mr A had been considering investing in trackers prior to investing with St. James Place. I understand Mr A will be feeling particularly disappointed if he was thinking of investing in a certain way, he followed professional advice to invest differently and then subsequently found that he would have been better off investing as he'd initially intended.

However there are no guarantees when investing in risk-based assets such as equities. Different professionals can have different reasonable opinions about how particular funds/shares/assets will perform, and so where money should be invested. There is debate within the industry about the benefits of trackers versus actively managed funds. However I don't think there is a universal consensus on the issue – some might arguably be more appropriate in certain circumstances. As I say, I appreciate Mr A will be feeling particularly frustrated if he'd been better off by following his original plans. But that is only known with the benefit of hindsight, and I don't think actively managed funds were unsuitable in the circumstances.

## **My final decision**

St. James's Place Wealth Management Plc had offered to calculate and pay compensation to Mr A in line with the methodology subsequently outlined in the investigator's assessment dated 18 March 2022, and taking into account that Mr A subsequently transferred his pension to another provider.

In summary, it agreed to compare the value of the pension actually transferred (which takes into account the Early Withdrawal Charge) with what the pension would have been worth had it grown in line with the benchmark recommended by the investigator in her assessment. And then make an appropriate adjustment to that figure to bring it up to date.

It also agreed to pay Mr A £750 for the distress and inconvenience caused. And a maximum of £2,000 towards fees for Mr A to take independent financial advice.

My final decision is that the offer made by St. James's Place Wealth Management Plc is fair and reasonable in all the circumstances. St. James's Place Wealth Management Plc should calculate and pay compensation to Mr A in line with that offer.

Interest at the rate of 8% simple per annum should be added to the compensation from the date of this decision to date of settlement if settlement isn't made within 28 days of St. James's Place Wealth Management Plc being notified of Mr A's acceptance of this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 7 September 2022.

David Ashley  
**Ombudsman**