

The complaint

Mr B complains that St. James's Place Wealth Management Plc (SJP) failed to re-evaluate his attitude to risk following changes in his circumstances resulting in investment losses in his personal pension plan (PPP). He also says it caused delays in transferring his plan. He wants compensation for the losses and inconvenience caused.

What happened

Mr B had been advised by SJP since 2012 in respect of his pension, ISAs and various other investments. His attitude to investment risk (ATR) was established as *“Medium”*. In 2014 it recommended investment into higher risk Enterprise Investment Schemes due to their tax advantages and says Mr B confirmed he was comfortable with this. In 2019 he raised a complaint about losses suffered and the charges taken on his ISA investments. This wasn't upheld and SJP explained it's *“time in the market”* approach and the medium to long term nature of the investments.

Mr B decided to transfer his PPP to another provider, which was completed on 12 June 2022. In October 2022 he complained to SJP, saying the value of his PPP had fallen by around £195,000 from 31 December 2021 before he transferred. And despite him complaining about market volatility in 2019, and changes in his personal circumstances his ATR hadn't been re-evaluated by SJP. He said his new financial adviser consider the ATR assessed by SJP to be *“completely out of line”*. He said this had resulted in larger losses being incurred. With further losses caused by delays in SJP responding to queries around the transfer. He said SJP should explain why his ATR hadn't been re-assessed and what losses would have been had he been invested on a *“balanced”* basis.

SJP didn't accept the complaint. It said its records showed Mr B's ATR had been considered. It provided two recommendation letters from 2020, which discussed fund changes and his ATR, which he'd accepted. It said there was a review meeting in February 2022 where he could have expressed concerns but hadn't done so. It said due to its long-term investment strategy it wouldn't have advised changes to try to time markets. SJP said losses might have been lower had medium risk investments been held during 2022 but returns prior to that would have been half what had been achieved. It said it hadn't delayed the transfer as it had provided the information requested within two weeks and completed the transfer itself in a few days. But it offered Mr B £100 for the delay in considering his complaint.

Mr B didn't agree. He said much of SJP's final response was irrelevant and it hadn't addressed whether he'd been *“invited to discuss changes in my risk profile and attitude to risk”*. He said he hadn't received either of the letters from 2020. And requiring him to raise concerns was ridiculous as the adviser was aware of various lifestyle changes and was required to discuss these and his ATR but hadn't.

SJP said the letters from the adviser had been sent to the correct address and it didn't need to evidence delivery. It said its investment strategy was relevant as Mr B's investments were over the medium to long term and despite the short-term loss of £195,000, had increased in value by 102.1% over the whole period.

Mr B referred his complaint to our service and our investigator looked into it, but he didn't uphold it.

Our investigator said, overall, SJP had provided the information and processed the transfer in a reasonable timescale. He said whilst the fall in value of Mr B's pension between 31 December 2021 and June 2022 would have been concerning, SJP needed to provide recommendations that met Mr B's investment objectives, consistent with his ability "to bear related investment risks" which he also had the knowledge and experience to understand. And whilst SJP's records didn't contain a detailed analysis of his risk profile they showed that this was consistently recorded on the high side of medium, with investments broadly made in line with this.

Our investigator said the recommendations made set out risk that fund values could fall and the ISA complaint made in 2019 showed Mr B was aware of this risk. He said the letter of October 2020 confirmed the ATR and associated risks which he felt Mr B would have understood and had the financial capacity to accept. He said whilst Mr B had said he hadn't received this letter or one from April 2020, there was no evidence these hadn't been sent. And even if they hadn't been received it was clear from previous correspondence that the PPP was invested into medium to high-risk funds. And had Mr B's ATR changed significantly it was reasonable that he should have raised this with the adviser.

Mr B didn't agree. He said our investigator had summarised the position when SJP first advised him in 2012, which wasn't relevant. He said it had been communicating by email for some time but was now relying "on suspiciously all encompassing" letters that weren't delivered. He said there was no evidence, apart from the "fictional letter dated 23 October 2020" that his ATR had been reviewed. He said the Conduct of Business (COBS) rules required SJP to undertake periodic assessments of the suitability of his arrangements and an updated know your client process.

As Mr B doesn't agree it has come to me to decide.

My provisional decision

I issued my provision decision on 13 August 2024, I explained the reasons why I was planning to uphold the complaint. I said:

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'm planning to uphold the complaint.

Much of what did or what didn't happen is disputed and I think there are significant gaps and inconsistencies in the evidence I'd normally expect to be available. Where the evidence is incomplete or contradictory, I need to use the balance of probability to decide what I think is more likely than not to have happened and to decide what's fair to both sides.

When the SJP plan was set up in 2012 the suitability letter noted an advantage as being "In addition you will benefit from regular face to face reviews and advice, which is important to you". The key features illustration dated 1 August 2012 said that ongoing charges would be 1.25% per annum, of which 0.25% would be paid the SJP adviser. In the section about advice costs, it said payments would be made each year to the adviser for "providing ongoing services throughout its term." The amount paid would depend on the value of the plan and an example of £1,726.85 is given for the second year. So, I think there was an agreement that SJP's adviser would provide ongoing advice and service to Mr B in return for these fees.

Mr B is correct that when giving ongoing advice and recommendations SJP would need to update “know your client” information in support of this to show the advice was suitable from Mr B. That would include his ATR and as I’ll note below, SJP’s risk profiling process also mentions the importance of this. But SJP’s records don’t include a detailed analysis of his ATR at any point during the 10 years or so he dealt with it. It also isn’t clear that the reviews and advice SJP had undertaken to carry out were always provided or if they were, that they were adequately completed. So, whilst Mr B has complained that not reconsidering his ATR resulted in additional investment losses a further issue may be that he has been charged for services that haven’t been provided. Which might mean that even if there isn’t a loss resulting from his investments being of too high a risk, there might be one due to unfair charges.

Due to the lack of evidence and inconsistencies in what had been provided, I asked both SJP and Mr B a number of questions about what had happened.

In response SJP accepted there were some issues around switches made in 2020, which I’ll detail below. But it said it still didn’t think Mr B’s complaint should be upheld. It said it had undertaken calculations between March 2020 and June 2022, which showed no loss had been incurred. The calculations compared the actual return to two benchmarks that our service often tells firms to use when undertaking loss calculations, with neither showing a loss. Broadly the benchmarks used were those typical to a “balanced” portfolio, which Mr B said he wanted a comparison made to. I don’t think this is the right comparison and I’ll be asking SJP to re-run this loss calculation on a slightly different basis.

What reviews were provided and were they required

Mr B’s plan started in 2012 before the introduction of the Retail Distribution Review (RDR) which abolished any future commission payments. RDR didn’t prevent pre-existing commission payments from continuing and generally there wasn’t a requirement for a firm to provide ongoing services in return for any ongoing commission payment. Although firms did sometimes offer to provide ongoing advice in return for the ongoing commission, as I think SJP had here.

Post RDR firms could only take on going charges in return for providing ongoing services and were required by the regulator to make sure the services were provided and not just offered. Generally, our service would expect reviews to be carried out on an annual basis or more frequently if agreed. SJP’s original suitability report said reviews were important, were part of the service and would contact Mr B annually to arrange a review. It also said that one of the advantages of its recommendations was,

“you will benefit from regular face to face reviews and advice, which was important to you.”

As Mr B was invested in a bespoke portfolio, I think reviews were required. Without them the investment of the portfolio would, over time, drift away from the original ATR classification unless it was manually re-balanced by the adviser. It seems to me that if these reviews weren’t undertaken the advice itself would cease to be suitable for Mr B compared to a non-bespoke investment where investment rebalancing would be automatic. I doubt Mr B would have accepted the recommendations if he didn’t think ongoing reviews and recommendations would be provided as the suitability letter states.

With a bespoke portfolio any changes required would need to be discussed and agreed by Mr B following a review. Alternatively different recommendations might be made over why investments should be left unchanged or new holdings acquired reflecting his circumstances

and objectives. So, based on what SJP offered Mr B in the suitability report I'd expect there to be evidence, that reviews were both offered and carried out and evidenced by updated fact finds and further suitability reports confirming any recommendations on a broadly annual basis from 2013.

And a further single contribution of £50,000 was also paid in April 2013, so after RDR, no commission was paid on the contribution as this had been replaced by adviser charging and was subject to an ongoing charge of 0.25% per annum. SJP says this didn't change the commission basis of the original payments into the plan. It has provided a suitability report dated 27 April 2013 detailing this recommendation and also some ISA investments. The covering letter says it will write to Mr B each year with a plan statement so "we can arrange a review". The report itself said as there was no change to Mr B's circumstances and his objectives were unchanged since 2012, the reasons for the recommendation were unchanged since then and the contribution was made into the same investments.

But the investment history of the PPP SJP provided shows little switching or rebalancing activity before 2020. The plan started in 2012, with the further investment made in April 2013, but no investment switches until November 2016. Then in 2020 there was a considerable increase in switching activity. This might have been prompted by Mr B's complaint in 2019 about the ISA. Initially it was difficult to follow what had or hadn't happened. But in summary switches were made in March 2020, but without any recommendation being made. Further switches were recommended in the disputed April 2020 letter but not actually made. Switches were made in June 2020, but with no recommendation letter. And switches were made in October 2020 with the disputed recommendation letter evidenced. No subsequent switches were shown on the statement.

Mr B provided a timeline from the notes he'd kept about what meetings and interactions he'd had with the SJP adviser. He said there was a Skype meeting on 18 April 2018, in advance of which he'd been emailed an investment report. He says he doesn't recall risk being discussed and there was no follow up to this meeting. In 2019 he says there was no invitation to any type of meeting or review and no risk reassessment. In April 2019 he complained about charges and what he felt was poor investment performance on his ISA and a lack of contact from his adviser. He says this complaint was indicative of him becoming more risk adverse, which SJP should have acted on.

In 2020 he said there was no meeting before 25 June, on Zoom, which was to discuss a separate investment for his business, and he had no recollection of risk being discussed. He says, when there was no follow up on this, he told the adviser he'd made other arrangements in August, and that there were no further meetings in 2020. In 2021 there was a meeting on Zoom, on 4 May but no information was provided beforehand, and there was a brief discussion about an investment in Vietnam, but no risk appraisal. Mr B says he then had to chase the adviser on 10 May 2021 for a copy of the valuation report discussed at the earlier Zoom meeting.

The further evidence provided by SJP was limited and I don't think it explains the inconsistencies in that previously provided. Mr B has disputed the legitimacy of the "all encompassing" recommendation letters from 2020, saying his adviser normally emailed correspondence. As most post is successfully delivered, it would certainly be unusual for two letters to be lost. And given that SJP has only been able to provide minimal supporting evidence that review meetings took place, or if they did at the correct point in time to match recommendations it says were made, or that Mr B's ATR was re-assessed, I do think it is questionable whether these letters were sent. Even if they were, the April 2020 letter in particular raises more questions than it answers.

SJP provided two fact finds, one from 2012 and a copy showing various updates up to 10 October 2019. The 2019 fact find lists meetings in most previous years but only contains brief notes about some of those meetings, with occasional and limited comment about Mr B's ATR. There are detailed notes about a possible investment in Venture Capital Trusts (VCTs) to be considered towards the end of the tax year. With a note saying, "Client generally considered Upper-Medium risk", but it doesn't refer to any re-assessment having been carried out.

There is nothing specific about Mr B's pension investments being reviewed then and it appears no investment changes had been made since November 2016. But there are no notes about any review meeting in 2016 that should have pre-empted those switches. SJP has evidenced a summary letter dated 9 May 2018 confirming that it had been agreed to keep the investments as they were at that point, but no rationale is given. And there is no reference to Mr B's ATR. A review meeting on 18 April 2018 is noted in the fact find history but there aren't any notes of what was discussed. SJP hasn't provided any suitability reports for other years apart from 2020, so the evidence so far is inconsistent and doesn't demonstrate that reviews were carried out on a broadly annual basis or in the comprehensive manner I'd expect to see.

Turning to the events of 2020, I haven't analysed the switches that were made fully. But those made on 6 March 2020 (no recommendation letter) appear to rebalance the portfolio to the SJP "Medium" ATR category assessed in 2012. The switches recommended, but not carried out in the disputed April 2020 letter, weren't the same as the actual switches made in March 2020. The letter refers to a meeting, which Mr B says didn't take place, which, as I'll explain below, SJP has no record of either. However, had the switches detailed in the letter been made they would appear to retain the overall medium ATR, whilst looking to increase exposure to Asian markets.

Switches were made in June 2020, also appearing to maintain that "medium" risk rating, but no recommendation letter exists. Mr B says there was no meeting about his personal investments around that time, but there were about his business. An email from the SJP adviser of 25 June 2020 referring to Mr B's business also mentions "switching and rebalancing", without confirming what this relates to and contains no recommendation or summary of what was happening.

Further switches were made, confirmed in the disputed recommendation letter of 23 October 2020. Again, Mr B says there was no meeting around then. These switches increased the ATR from "Medium" to "Upper-Medium". So, it isn't clear what recommendations were provided or what switches if any in 2020 were authorised by Mr B.

SJP has said as confirmation of the actual switches carried out was sent separately (that is, not by the adviser) to Mr B, if these weren't in line with his requirements, he could have raised any queries or concerns at the time. That's not an argument I'm persuaded by, and it doesn't explain the inconsistencies and or apparent failure to carry out reviews.

Attitude to risk (ATR)

As the re-appraisal, or not, of his ATR is at the heart of Mr B's complaint I asked SJP for details of how it undertook this process. Many advisory firms use risk profiling software systems, some of which provide for the client to sign the output to confirm their answers to various questions and understanding of the process and outcome. The use of such systems isn't mandatory and there is some debate as to their effectiveness, but they do provide documentary evidence of the process.

SJP used a different approach. It provided copies of a brochure called "A Guide To Understanding The Balance Between Risk And Reward" (the Guide), which is 16 pages long featuring a number of tables and graphs. It said the Guide was updated from time to time and its advisers used it as a discussion document with clients, asking various questions to help them make "sensible investment decisions". So, no record of the ATR assessment would exist, other than any notes made at the time, with the ATR being confirmed in the suitability report making the recommendations.

The Guide says,

"We understand that your attitude towards risk is something you may find difficult to determine. The amount of risk you are prepared to accept is likely to vary over time and may be different for each investment you make"

It sets out five broad categorisations from low to high risk and "To help you choose investments" and details of matching SJP portfolios. And says that:

"You should review your investments regularly to ensure that the balance of risks remains appropriate to your circumstances. Your St. James Place Partner will help you to do this."

So, ongoing reappraisal of ATR is important to the SJP investment approach. As well as the pre-selected investment portfolios SJP advisers have the option to recommend bespoke portfolios, if appropriate. These would need to be periodically reviewed and rebalanced to match the agreed or revised ATR. Mr B's arrangements were bespoke. So, I asked SJP what the adviser needed to do to put together and review a bespoke portfolio and recommend it to a client. It provided an overview of the multiple factors the adviser needed to consider.

So, during the review process there should have been a discussion about risk, using the Guide. The April 2020 letter specifically says this document was discussed. It also says a copy of the Guide was enclosed with the letter. The October 2020 letter also says the Guide was enclosed, but not that it was discussed, which I thought was surprising given the ATR was increased at this point. As Mr B has said that what meetings there were generally online, rather than in person. So, for the Guide to be discussed it would need to be provided to him in advance, logically by email.

I asked SJP for evidence that the Guide had been provided to Mr B before the review meetings. I also asked it to confirm the dates of the meetings and for any recordings, file notes or other records it had, like fact find documents, that would demonstrate it knew enough about Mr B's circumstances and requirements to make the recommendations it did in those letters. SJP said no notes or records were available to confirm the dates of the 2020 meetings or that the Guide had been provided. It did say errors on a software system resulted in some updated information not being saved on the fact find.

SJP did provide a copy of a suitability report dated 10 March 2020. This recommended investments into VCTs referred to in the October 2019 fact find update, I noted above. The report said Mr B wished to invest £200,000 of funds accumulated in his business, which doesn't make much sense as VCT's are personal investments. It continues that his ATR has been discussed and it was agreed he was a "medium risk investor", but it then says his ATR was "upper medium". It says as VCTs are "high risk" they weren't "consistent" with his ATR, but the recommendation was made to provide investment diversification and tax relief. SJP said this report showed that his ATR had been considered during the period. I asked Mr B about this. He said he'd never seen this report and that he believed it had been produced after his complaint had been made. Again, this is difficult to prove either way, but I'd be

surprised that any adviser taking the trouble to write a report recommending £200,000 in new investments wouldn't follow that up in some way, but no evidence of that has been shown.

So, there is very little evidence of what happened in 2020 other than the disputed letters. According to these, having discussed risk and re-evaluated Mr B's ATR the adviser discussed investment markets in general. Having done this during the same meeting the adviser then provided specific recommendations. This could involve selling some investments and buying more of others as well as possibly new investments in the appropriate proportions to match the asset allocation of the ATR classification and other factors set out by SJP. Mr B would then need to authorise the transactions.

SJP says there is no automated process for the adviser to re-balance a bespoke portfolio, but various supporting documents were used to discuss the risk and returns of various funds used, "But unfortunately, he has not got a copy of the supporting material". Presumably these would need to be held up to the camera for Mr B to see on a Zoom meeting, which I think is somewhat implausible. And it's hard to see how all this could be achieved during a single Zoom meeting and the appropriate adjustments recommended and accepted.

If notes weren't made during the meetings the review letters SJP says were sent were presumably written from memory. I note the review letter dated 9 May 2018 was some 21 days after the recorded meeting date, of which no notes exist. The April 2020 letter refers to "our recent discussion" rather than confirming when this was. The October 2020 letter states the review was carried out that day. Both letters refer to Mr B's "SJP Fund holdings" rather than specifically identifying his pension plan. However, the fund switches described in the October 2020 letter were those made to the pension plan. But his ISA investments were also switched at the same time as the pension plan (but to different investments) and there is no reference to this in the letter or that a separate letter would be sent regarding any ISA recommendations.

SJP said there must have been reviews in March, June and October 2020 for the switches to have been made. As the adviser shouldn't have made switches without Mr B having authorised them, this argument isn't surprising. But from the limited evidence whilst there was contact between Mr B and the adviser it isn't clear that reviews were carried out, or that the actual switches made were authorised by him. There is no evidence the risk Guide was provided before the meetings SJP say must have taken place but which it can provide no evidence of, that would have enabled a reappraisal of his ATR, which was necessary to ensure the ongoing suitability of the investments, and it possibly doesn't have records to demonstrate the suitability of the funds acquired at the time.

Mr B's ATR and the loss calculation SJP has completed

Given these considerable inconsistencies and irregularities it isn't clear what actually happened, but it seems that Mr B was, until October 2020 broadly invested in a "Medium" risk portfolio and then increased to "Upper-Medium". He says the SJP "Medium" classification from 2019 was much higher than the "Balanced" ATR his new adviser assessed when he moved his pension from SJP. Generally, investment portfolios are constructed on an asset allocation basis, where the mix of underlying assets like shares, bonds and cash are blended based on their historical volatility and returns to match the assessed ATR of the client. Opinions will vary about the precise allocation to be used from time to time.

Some approaches have more risk classifications than the five used by SJP and use different expressions to describe them such as "balanced" rather than say "medium". But the expressions medium and balanced suggest a mid-range ATR and I'd typically expect to see

a broadly similar asset allocation. That might mean that Mr B's newly assessed ATR might not have been very different to SJP's medium, although further evidence might show otherwise. And this may mean that the benchmarks SJP used in its loss calculation aren't inappropriate.

Whilst a client of SJP Mr B had a range of investments in addition to his pension plan across a quite broad spectrum of risk. It isn't unusual for investors to assign different risk profiles to different savings pots. Mr B says had his ATR been discussed he would have de-risked his pension portfolio due to becoming a father. I've considered this carefully, and I need to be fair to both sides. And considering what Mr B did do, I can't be certain that he would have markedly reduced the risk. He complained about poor returns on the ISA in 2019 (seemingly suffered during 2018) but not about the pension then and I'm not aware that significant revisions were made to the ISA holdings to de-risk that.

And Mr B does also have the benefit of hindsight in respect of how investment markets actually performed. And it might be that experiencing further losses subsequently caused his ATR to change. He doesn't appear to have reached out to SJP to relay any concerns he might reasonably have had if his views had changed before then. And whilst it isn't clear reviews were carried out as they should have been, there is evidence he was in contact with his SJP adviser about other investment matters. And I can see that the adviser discussed the investments in detail after Mr B complained in 2019. In the circumstances I think that was a reasonably sufficient event to have triggered any doubts or concerns that he might have had about investments in general, but it doesn't appear to have done so. So, it isn't clear that a discussion about risk in relation to long term investment assets like his pension would have prompted Mr B to suddenly reappraise his ATR if it hadn't already occurred to him.

At this stage unless further evidence shows otherwise, I can't be certain that Mr B's ATR would have reduced from the medium classification with SJP. So, it wouldn't be reasonable for me to tell it to run loss calculations on a lower category of risk than the medium rate that was originally assessed. But the final switches made in October 2020 did increase the risk of the portfolio, with no evidence to show that this was what Mr B wanted or was suitable for him. Because of that I think it's fair that a new loss calculation be carried out from the date of the October 2020 switches until he transferred to another provider in June 2022. As the bespoke SJP portfolio required regular rebalancing and I don't know exactly when or how this would have been done, the use of a benchmark index seems fair, and I'll explain this below.

I also think SJP undertook to provide pension reviews in 2012, and it had a specific obligation to provide them for the top up contribution paid in 2013. But it has provided little evidence that reviews were carried out after 2013 and switches were only carried out in 2016 and 2020, which suggests reviews may not have been carried out in some of those other years. It isn't clear that any review was carried out after May 2018 despite the switching activity in 2020. So, even if Mr B hasn't suffered an investment loss, he may have been charged for services he wasn't provided with, which isn't reasonable. Where SJP can't demonstrate it carried out reviews I think it's fair that it confirms what OAC was taken and refunds this with growth and interest to date, before completing the loss calculation. I'll set out how I think it should do that below.

I am aware from other complaints that because of the way SJP structures its business it may argue that for the contributions paid before RDR that it wouldn't have reduced the charges on the plan even if reviews weren't to be provided. But I think Mr B wanted reviews and that the provision of these was an integral part of SJP's advice to him and had he been aware reviews wouldn't be provided he would have considered his options and sought advice elsewhere as he subsequently did.

That means where reviews haven't been carried out Mr B hasn't been treated fairly and this has caused him some distress and inconvenience, particularly as he was concerned about investment losses. And it's fair that he should be paid compensation in respect of that. I don't think the £100 compensation already offered by SJP for the delays in looking into Mr B's complaint is fair compensation so far. So, it should pay Mr B a further £400 to give £500 in total.

Putting things right

I said my aim is that Mr B should be put as closely as possible into the position he would probably now be in if he had been given suitable advice. I set out how I thought SJP should complete a loss calculation compared to an appropriate benchmark and to pay compensation if this showed a loss.

I asked both parties to send me any further information or comments they would like me to consider.

Response to provisional decision

Mr B accepted my provisional decision. He said he remained concerned that despite not being able to show evidence to refute his complaints, SJP still disputed them. He said "*in all the years*" he'd dealt with it he'd never seen or heard of the risk Guide. He said he hadn't reached out to SJP about risk himself due to the birth of children in 2019 and 2020 and being trapped outside the UK for a period of time due to Covid travel restrictions which prevented him from returning until July 2021. He said he was concerned over any calculations that SJP would complete and asked how he could check these. And he said due to his financial plans his intention was to be a basic rate taxpayer in retirement and to use his pension as an inheritance tax planning vehicle.

SJP also accepted my decision. It said it had run the loss calculations I'd proposed between 29 October 2020 and 6 June 2022, which showed a gain of £14,486.70 for the SJP plan, so there was no loss. It said it was happy to pay the total of £500 compensation for the distress and inconvenience caused.

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 decided to uphold the complaint.

Mr B has clearly had a poor experience with SJP and its inability to show what it had and hadn't done in terms of reviews is concerning. It has shown little or no evidence that it carried out reviews as it promised it would for many of the years that it dealt with him and the standard of record keeping in place was clearly unacceptably poor. It isn't the role of our service to punish businesses for failings like these, but to ensure a fair resolution to the consequences caused by problems by putting the consumer back in to the position they should have been in. And I can additionally award compensation for distress and inconvenience caused.

So, I need to consider the consequences of the failure to carry out reviews for Mr B. And whilst I note his comments about his circumstances from 2019 onwards and how he says this impacted his attitude to risk, it was the case that he was still in some contact with his adviser and could reasonably have flagged any concerns he had about the risk associated with the investments. So, I don't think there is enough evidence to say his risk profile had

materially changed from the broadly “*medium*” category that had generally been in place for him. But because SJP hasn’t treated Mr B fairly it’s reasonable that it should run calculations to see if he has suffered losses compared to a benchmark investment index appropriate to that medium risk classification, and I’ve set out in detail below how that should be done. Unlike SJP’s product and investment funds, a benchmark index isn’t subject to charges. So, this provides a fair comparison.

It appears from the loss redress calculation SJP has already provided in response to my provisional decision that Mr B hasn’t suffered a financial loss over the relevant period. Unfortunately, our service isn’t able to check these calculations, but I note that SJP has used proprietary loss redress software for the calculations and the actual performance of the benchmark index is available online for comparison purposes. His financial adviser may be able to assist him further in this.

As I think Mr B has been caused distress and inconvenience by the failure to carry out reviews as SJP promised, it’s fair that it pays compensation for that. I think it should pay a further £400 compensation in addition to the £100 it has already offered to give £500 in total.

Putting things right

My aim in awarding compensation is that Mr B should be put as closely as possible into the position he would probably now be in if he had been given suitable advice.

Fair compensation

I think Mr B would have invested differently. It’s not possible to say precisely what he would have done, but I’m satisfied that what I’ve set out below is fair and reasonable given Mr B’s circumstances and objectives when he invested.

What must SJP do?

To compensate Mr B fairly, SJP must:

- First calculate the value of the adviser fees from 8 May 2018 reflecting the actual and benchmark returns as set out below, from the date they were deducted until the date Mr B transferred away, together with simple interest at 8% a year up from the date of transferring away up until the date of settlement and pay this to Mr B. If the below comparison shows that no compensation is payable, the difference between the *actual value* and the *fair value* can be offset against the fees with interest. Where SJP can’t demonstrate reviews were carried out in the years before 2018 it will also need to calculate and repay those fees on the same basis

- Then compare the performance of Mr B’s investment with that of the benchmark shown below. If the *actual value* is greater than the *fair value*, no compensation is payable.

If the *fair value* is greater than the *actual value* there is a loss and compensation is payable.

- SJP should also add any interest set out below to the compensation payable.
- If there is a loss, SJP should pay into Mr B’s new pension plan to increase its value by the amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be

paid into the pension plan if it would conflict with any existing protection or allowance.

- If SJP is unable to pay the compensation into Mr B's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore, the compensation should be reduced to *notionally* allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr B won't be able to reclaim any of the reduction after compensation is paid.
- The *notional* allowance should be calculated using Mr B's actual or expected marginal rate of tax at his selected retirement age.
- It's reasonable to assume that Mr B is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr B would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.
- Provide Mr B with a simple calculation of how it arrived at the figures.
- Pay to Mr B a further £400 for the distress and inconvenience he has been caused to give £500 in total.

| Portfolio name | Status | Benchmark | From ("start date") | To ("end date") | Additional interest |
|---------------------|--------------------|---|---------------------|------------------------|---|
| SJP Bespoke Pension | No longer in force | FTSE UK Private Investors Income Total Return Index | 29 October 2020 | Date ceased to be held | 8% simple per year on any loss from the end date to the date of settlement* |

*Income tax may be payable on any interest paid. If SJP deducts income tax from the interest, it should tell Mr B how much has been taken off. SJP should give Mr B a tax deduction certificate in respect of interest if Mr B asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

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.

Any additional sum that Mr B paid into the investment should be added to the *fair value* calculation at the point it was actually paid in.

Any withdrawal from the portfolio 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've chosen this method of compensation because:

- Mr B wanted Capital growth and was willing to accept some investment risk.
- The FTSE UK Private Investors Income **Total Return** index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's a fair measure for someone who was prepared to take some risk to get a higher return.
- Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mr B's circumstances and risk attitude.

My final decision

For the reasons I've given above and in my provisional decision, my final decision is that I uphold this complaint against St. James's Place Wealth Management Plc.

I direct St. James's Place Wealth Management Plc to undertake the loss calculations as set out and pay compensation as required.

I further direct St. James's Place Wealth Management Plc to pay Mr B a total of £500 in compensation for the distress and inconvenience caused by its failure to carry out reviews as it should have.

If St. James's Place Wealth Management Plc doesn't pay compensation due within 28 days of our service telling it Mr B has accepted my final decision it must pay interest at 8% per year simple on the compensation from the date of my final decision until the date it makes settlement.

If St. James's Place Wealth Management Plc deducts income tax from the interest, it should tell Mr B how much has been taken off. SJP should give Mr B a tax deduction certificate in respect of interest if Mr B asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 25 October 2024.

Nigel Bracken
Ombudsman