DRN-3476487

## The complaint

Mr H complains St James's Place Wealth Management Plc (SJP) gave him unsuitable investment advice.

## What happened

In 2017, Mr H received advice from SJP to invest £20,000 into an investment bond which would be held in a Loan Trust. SJP said this would help mitigate Mr H's potential inheritance tax (IHT) liability. The bond was set up to provide an income of £800 per year. Mr H didn't take any withdrawals after 2018. He surrendered the bond in 2021 and paid early exit fees. In 2018, Mr H told SJP that he would be switching to a new adviser. SJP didn't give ongoing advice past this point but did charge for it.

Mr H, represented by his new adviser, made a complaint. His representative complained, after looking at the suitability letter, that this advice wasn't suitable. He explained that there was no need for the income, so the bond wouldn't have fallen outside of the estate. Mr H says he was told the whole investment bond would fall outside of his estate for IHT purposes, but that this wasn't the case. Mr H's representative explained that the advice should've been to reduce his pension withdrawals as this would've had a greater effect on his IHT liability. Mr H also complained that no ongoing advice was received and that he should've been advised of the consequences of cancelling the bond withdrawals.

Whilst our Investigator was looking into this complaint, SJP accepted that it should refund the ongoing advice charges when it hadn't provided this service. It said it stopped providing advice when Mr H told SJP he was going to use a new adviser. The offer compared what Mr H's bond would have been worth had those charges not been applied and repay the loss together with 8% simple interest from the date of withdrawal to the date of settlement. Our Investigator felt this was fair. SJP also offered Mr H £125 compensation (as part of overall compensation offered to him and his wife) for an apology for its delay investigating his complaint.

Our Investigator didn't think the advice overall was unsuitable. He said that it did go towards Mr H's objective of mitigating his IHT liability. And he couldn't see that he'd been told the whole bond would fall outside of the estate. The Investigator referred to the suitability letter which mentioned that the income not spent would fall back within the estate and that the investment growth would be outside the estate for the purposes of IHT.

Mr H disagreed and asked for an Ombudsman to make a decision. His representative said that the advice should've been to reduce Mr H's pension drawdown to zero as they didn't need the additional income. He said this would've mitigated his IHT liability as well as saving around £6,000 in income tax each year. Mr H would like his exit fees refunded, as well as his missed tax savings and pension growth had he been given the different advice.

## 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.

*Ongoing advice*

I can see that SJP charged Mr H for ongoing advice. This was part of the service that Mr H had signed up for. But when Mr H told SJP in April 2018 that he would be using a different adviser, SJP stopped providing this service. It follows that it's fair for these charges to be refunded – as no ongoing advice was given past this point.

SJP confirmed that the ongoing advice charges to be refunded are:

£100.13 - 1 Feb 2018
£99.17 - 1 Feb 2019
£104.55 – 1 Feb 2020
£104.10 – 1 Feb 2021

It has offered to refund these charges by calculating what the investment bond would've been worth when Mr H surrendered it had those charges not been applied. It would then give Mr H the difference plus 8% simple interest from the date Mr H surrendered his bond to the date of settlement.

I think this is fair and reasonable. It puts Mr H in the position he'd have been in had those charges not been applied. And, given SJP didn't provide the ongoing advice past a certain point, it is right that SJP doesn't charge for it.

*Mis-sale of the investment bond*

The main aspect of this complaint is that Mr H was mis-sold the investment bond which was put into a Loan Trust. His representative has explained that he had sufficient income and so was unlikely to be able to spend the yearly income from this bond, which meant that it would always fall back within the estate. Mr H's representative has explained that had Mr H been aware the full investment bond wouldn't fall outside of his estate for IHT purposes he wouldn't have taken it out. Mr H's representative went further and said Mr H should've been advised to reduce his pension drawdown income to zero and that Mr H has lost out because this advice wasn't given.

I've had to consider the purpose of the advice SJP gave and whether the advice was suitable for Mr H's objectives at the time. Having done so, whilst I can see why Mr H's representative has explained an alternative option, I can't say the advice SJP gave was unsuitable for his circumstances and I'll explain why.

Mr H, together with his wife, sought advice from SJP on this occasion because they didn't have anything in place to start mitigating their IHT liability. The suitability letter sent to Mr H confirms this. So, I've considered whether the advice SJP recommended addressed this need.

Mr H was recommended to invest £20,000 into a Loan Trust. This effectively meant that any growth on the investment would fall outside of his estate for IHT purposes, and any withdrawals from the bond would also fall outside of his estate if spent. Effectively, the Trust meant he could potentially reduce his estate and therefore his IHT liability. It seems accepted that the investment bond was in line with Mr H's attitude to risk, so the advice to invest into the bond and setting up a Loan Trust wasn't unsuitable for his circumstances.

Mr H's representative has focused on the fact Mr H had ample income already, and the advice should've been to reduce his pension drawdown income to zero. I think it's clear Mr

H, together with his wife who received advice at the same time, had sufficient income to meet their essential expenditure. I've also seen that the majority of their income was for "discretionary expenditure". So, I don't think there was an absolute need for additional income but the annual income was set to £800. Looking at Mr H's level of income overall, I don't think this made a large amount of difference and could be spent. I can also see reference to Mr H wanting to ensure his investment produced an income throughout the suitability letter, so I don't think that made it unsuitable. The fact find and suitability letter suggests that Mr H was comfortable investing £20,000 but wanted to retain control over that money. So, placing those funds into a Loan Trust would give Mr H that control and access to the original capital but ensuring any growth falls outside of the estate.

I've not seen any indication that Mr H was looking to reduce his income. And his representative's suggestion is to reduce his income by over £19,000. As there was no discussion about reduction of income, I don't think SJP has acted unreasonably in not suggesting this advice. Mr H wanted to look at IHT planning, and was given advice that went some way, albeit minimal, to mitigate his potential liability. It appears the advice was driven by how much Mr H wanted to invest. The alternative Mr H's representative is suggesting would make significant changes to his income and is a holistic view on tax planning as a whole, not just something for IHT planning. I can't see that Mr H was looking for that at the time of the advice and I don't think the advice was unsuitable on that basis.

I've also noted that Mr H felt he was told the full amount of the investment bond would fall outside of his estate for IHT purposes. But the suitability letter says the following:

*"Any income received which is not spent will fall back within the Settlor's Estate for Inheritance Tax purposes, likewise will any outstanding loan amount."*

I've also noted the letter gives a projection of how the IHT liability could be reduced and refers to that happening if the Loan Plan is held until February 2042. So, I've not seen anything that says the whole investment falls outside of the estate immediately. I do understand that to withdraw the value of the bond using the annual withdrawal amounts would take 25 years, making Mr H around 98 years old. But, the purpose of the advice was to go some way in mitigating Mr H's IHT liability and by placing the bond in the Loan Trust, this did that.

In summary, whilst I understand Mr H's representative's point that there were additional tax mitigating solutions available, I can't agree that this means this advice was unsuitable. Particularly given Mr H's recorded objectives at the time of retaining control of the capital and taking an income. So I won't be asking SJP to refund the exit fees.

SJP offered £125 for the length of time it took to investigate Mr H's complaint. As complaint handling isn't a regulated activity, I've not looked into this aspect. It is up to Mr H to speak to SJP if he decides to accept this offer of compensation.

**Putting things right**

I agree that SJP should ensure Mr H hasn't lost out for being charged for ongoing advice that he didn't receive. It's offer is fair and reasonable for this. St James's Place Wealth Management Plc should now refund the ongoing advice charges (detailed above) by calculating what the investment bond would've been worth when Mr H surrendered it had those charges not been applied. It should then give Mr H the difference plus 8% simple interest from the date Mr H surrendered his bond to the date of settlement.

If St James's Place Wealth Management Plc considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr H how much it's taken off. It should also give Mr H a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

## My final decision

For the reasons I've explained, I partially uphold this complaint. St James's Place Wealth Management Plc must put things right in the way detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 9 June 2022.

Charlotte Wilson
**Ombudsman**