

The complaint

Mr B complains about various matters affecting instructions to St James's Place UK plc ("SJPUK") about an investment bond held in trust.

What happened

In mid-2019, Mr B and two family members – for anonymity I'll call them T2 and T3 – were trustees of a loan trust. The loan that set up the trust was owed to one of the trustees – T2.

The trust deed identified family members – including Mr B and T3 – who could benefit from the trust. But the trustees could decide how much of a share any one beneficiary got. This is what's called a discretionary trust.

The investment held by the trust was administered by SJPUK. Historically, an adviser linked with SJPUK had given the trustees advice about the investments. But by mid-2019, the trustees were using a different financial adviser, not directly linked with SJPUK.

The trustees' adviser has told us they were in contact with SJPUK and a lawyer about how to transfer the trust's assets to some of its beneficiaries in a tax efficient way. The adviser says they received some forms from SJPUK to do that.

The contact led to the trustees' adviser sending SJPUK some signed documents in early December 2019 – a deed of waiver, and a deed of appointment. The templates for these deeds clearly originated from SJPUK.

The deed of waiver I've seen says T2 waived her claim on the loan she'd given to the trust. But it didn't say she'd stop being a trustee. From what I can see, T2 remains a trustee.

The deed of appointment I've seen says it was appointing an absolute interest in the trust fund to three beneficiaries. It seems to change the discretionary trust to something more like an absolute trust. That is, the trust still owns the assets, but the trustees must now account to specific beneficiaries for a specific share of the trust's funds.

Immediately after these deeds were logged with SJPUK, Mr B, T3 and the other appointed beneficiary sent instructions to SJPUK saying they each wanted to encash their investments. But SJPUK rejected those instructions.

Their contact about that appears to have been with the SJPUK linked adviser until late January 2020. At that point, SJPUK appear to have contacted T2, which led to T3 getting in contact with them.

Mr B meanwhile was in contact with the SJPUK linked adviser. We've considered a complaint about their involvement separately. But that contact seems to have led to Mr B sending SJPUK a letter in February 2020. This included a new instruction – from Mr B and T3 – to encash the investments and pay the proceeds to T3. And the instruction referred to a deed of variation removing T2 as a trustee.

No one has been able to show us that deed of variation. Last time I concluded it was likely it

didn't actually exist, and the trustees were instead referring to the deed of waiver.

After receiving the February letter, SJPUK went to the SJPUK linked adviser to ask for the deed of variation. In correspondence from mid-March, the linked adviser sent the deeds of waiver and appointment to SJPUK. The encashment went ahead after that, with the surrender date as 19 March 2020.

The delays caused by all of this – combined with the global events of 2020 – meant the value of the investments had fallen by the time they were encashed. The back-and-forth also caused trouble and upset for Mr B and the trustees. And the encashment was by the trustees, rather than by the individual beneficiaries. A complaint to SJPUK followed.

In their first response, SJPUK didn't uphold the complaint. They explained they'd needed the deed of variation removing T2 as a trustee to proceed. SJPUK indicated they'd been sent the deed of variation by the linked SJPUK adviser in mid-March.

A further response from SJPUK highlighted they hadn't advised the trustees about the transfer of ownership of the investments. They noted they'd provided the trustees' adviser with forms, but felt it was for that adviser to make sure the forms did what was intended.

I wrote last time that I planned to uphold Mr B's complaint. I found it was reasonable SJPUK hadn't accepted the instructions sooner, given the deeds hadn't removed T2 as a trustee. But I found SJPUK could have communicated the problem better than they did.

I felt that with a reasonable level of service the trusts' investment would have been surrendered sooner. So I said SJPUK should compensate the trust for the difference in value that would have achieved. I also said SJPUK should pay Mr B £300 compensation, to acknowledge the trouble and upset caused for all of the trustees.

In response, SJPUK repeated their understanding of the complaint and sent us further copies of their complaint response letters. This has added nothing to my review, as I'd already factored those letters and SJPUK's understanding in to my provisional decision.

Mr B responded with further comments about the timeline of events. He felt SJPUK had been telling him the withdrawal was fine to go ahead as early as December 2019. And he felt their complaint handling and responses had added to the confusion and disappointment for the trustees. But he said he'd accept my provisional decision.

With these responses, I'm now ready to make a final decision for this case.

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, my decision remains as I set out last time. I'll repeat the key details, with minor changes to show how I've factored in the latest responses from Mr B and SJPUK.

The deeds I've mentioned above didn't achieve what the trustees and their adviser were aiming for. They didn't transfer ownership of the investments away from the trustees. And they didn't remove T2 as a trustee.

So I find it reasonable SJPUK didn't act on the December 2019 instructions. Without T2 the instructions lacked the formal authorisation of all trustees – the owners of the investment.

I note Mr B's latest comments about being told the instruction would be followed. But I can't see that in the correspondence or contact notes from the time. SJPUK acknowledged receipt of the deeds. But stopped short of saying ownership had passed to the beneficiaries.

I appreciate some of what Mr B's said though. SJPUK didn't have any other deeds between then and March 2020. So if they had enough to act in March, it must follow they could have acted in December.

But it appears SJPUK thought they had something new in March 2020 – a deed of variation.

Our investigation has asked both sides of the complaint for the deed of variation referred to in the trustees' February 2020 letter. The fact no one's shown it to us leads me to conclude – more likely than not – that no such deed exists.

SJPUK have said they saw it though – in March 2020. They say their linked adviser gave it to them. But when I've looked at the correspondence between SJPUK and their linked adviser in March 2020, it only refers to the deed of waiver and the deed of appointment. That tells me SJPUK are wrong to think they ever saw a deed of variation.

From that, I find SJPUK made a mistake in March 2020 when they acted on the February instruction. They were still in the same position they were in following the December 2019 instruction – they hadn't seen agreement from all of the trustees to encash the investments.

If the service had been reasonable, SJPUK would instead have rejected the February 2020 instruction, until it was agreed with T2.

With that said, I don't see a detriment to that mistake. I'm happy to accept that T2 would likely have agreed to the instruction if SJPUK had insisted on confirming it with her. I say that because correspondence Mr B's sent us shows she was aware of and agreeable to the plan Mr B and T3 seem to have been following.

Had SJPUK not mistakenly accepted the deeds from December 2019 as a deed of variation, then the encashment process could have taken longer. I say this because it appears the trustees would either have had to have T2 provide her agreement to it, or to have had an actual deed of retirement or deed of variation prepared. Either would have taken time to get.

So then I've thought about whether it's fair to have SJPUK compensate the trustees for the time it took to have the investments encashed. While I can see an error in what SJPUK did here, it seems to aid the timescale, not prolong it.

And – coming back to my starting point – the ultimate problem wasn't with SJPUK refusing the instructions. It was that the documents the trustees and their adviser were using didn't do what they thought they did.

Last time, I considered who was responsible for the deeds not achieving what was intended. SJPUK weren't the ones advising the trustees about how to do things. SJPUK's role was to administer the investments – to follow instructions from the trustees or their adviser.

It seems likely the trustees' adviser asked for the forms needed to transfer ownership of the investments from the trust to the beneficiaries – that was the plan, after all. So it's a little odd SJPUK sent a form that appoints a beneficial interest instead.

But ultimately, the SJPUK produced templates used here do – on close inspection – set out the extent of what they'll achieve. I'd have expected that to do enough to tell a professional adviser what they would achieve before completing them.

So I find SJPUK aren't responsible for the failure in the deed paperwork. Given that failure, it was reasonable for SJPUK not to act on the instructions. And I can't see a point when they were in a position to do otherwise.

But then there's the communication in this case. I can see SJPUK were using their linked adviser as something of a go-between with the trustees. That seems to follow the trustees seeing no great distinction between SJPUK and their linked adviser. I can understand that, as the trading names are very similar.

That's meant it took a long time – about six weeks – for the trustees to be told there was a problem with the December 2019 instruction. SJPUK could have reduced that period if they'd done more to contact the trustees or their separate adviser directly.

From late January 2020 onwards, SJPUK did enough in my view to tell the trustees that the lack of an instruction from all the trustees was an issue. That stopped short of saying the deeds weren't doing what had been intended. But it should have been enough for the trustees or their separate adviser to think about why a trustee instruction was still needed, and so arrive at the conclusion there was some problem with the deeds.

Although Mr B's said he was told in late January 2020 that the payment would be made, I again can't see that's reflected in the correspondence or SJPUK's contact notes from the time. And if that had been the case, it wouldn't really have made sense for the trustees to change their instruction in February.

While the actions taken if there'd been clearer communication may not have been too different, the timing of them could have been. With a more rapid reply to the December 2019 instruction, the February 2020 letter may have been submitted earlier. And in turn, the encashment it led to could have happened sooner than 19 March.

Putting things right

How much sooner is then the key question for putting things right.

SJPUK's records say they received the December 2019 instructions on 18 December. It would have taken some time for them to look at the instructions, find there was an issue, and then set out what that was before going back to the trustees. I find five working days would have been a reasonable amount of time, particularly with the contact being close to the festive period when key people might be away.

That would mean SJPUK telling the trustees there was a problem sometime around the end of December, maybe early January with the Christmas post. The trustees actually received notification about four weeks later, at the end of January 2020. That delay could have been avoided if SJPUK had provided a reasonable level of service.

Taking that four-week period from the actual events leads me to conclude the surrender of the investments could have happened by 20 February 2020. So to put things right, I find that's the value the trust should receive.

I've decided not to include any interest on that amount. That's the sort of remedy I'd direct when someone has been without the use or opportunity to profit from some money. Here, the only use it appears the trustees were planning to make of the money was to pass it to the beneficiaries. So any opportunity to gain from the money has been lost by the beneficiaries of the trust, not the trust itself.

Those beneficiaries aren't eligible to bring a complaint to our service, even where they've

suffered a loss. So I'm not going to direct interest be added to the delayed trust funds.

I've thought about the non-financial impact on the trustees. Financial compensation can acknowledge where there's been upset because of a failing by SJPUK. But I've had to be careful to consider what failings here have caused the most upset to the trustees.

Some of what they feel is because they couldn't encash the investments in December 2019. Even with a fully reasonable level of service from SJPUK, I find that wouldn't have been possible, given the problems with the deeds.

But there have been mistakes by SJPUK, and those left the trustees feeling upset and like they've had to work harder than needed to get things done. A modest payment here of £300 to the trustees is suitable. It acknowledges there's been an impact on them, but also accounts for not all of the problems here being SJPUK's responsibility.

I direct this be paid to one of the trustees – Mr B unless SJPUK are told otherwise – for them to decide how best to divide it between them.

My final decision

I've decided to uphold Mr B's complaint about St James's Place UK plc. To put things right, they should:

- Pay to the trust itself the difference between the surrender values of its investments on 20 February and 19 March.
- Pay to one of the trustees – Mr B unless there's an agreement otherwise – a total of £300 compensation for the trouble and upset caused to all the trustees.

Under the rules of the Financial Ombudsman Service, I'm required to ask Trustees of the Mrs A B & Trustees Loan Trust to accept or reject my decision before 22 March 2023.

Paul Mellor
Ombudsman