

## **The complaint**

Mrs S complained, in her capacity as the appointed sole executor of the estate of Ms R, that St James's Place UK plc ('SJP') delayed the surrender of an investment bond held within Ms R's estate, resulting in loss to the estate. She was also unhappy about the poor service provided to her and to the solicitor she instructed to assist her with probate matters.

She didn't feel that the redress SJP offered was adequate to reflect everything that happened.

## **What happened**

Ms R died in 2018 and Mrs S is her appointed executor, with authority to bring a complaint on behalf of the estate.

Ms R's estate included an investment bond with SJP and SJP has admitted it was responsible for delay in the surrender of the bond.

By way of background, I've included here a brief timeline of events:

22 November 2018     Mrs S' solicitor wrote to SJP advising he was instructed to act for Ms R's executors and asking for confirmation of the value of all assets held within the estate and details of SJP's requirements for dealing with the investments once probate was granted.

3 December 2018     SJP replied and provided information about assets held within the estate, including a bond which it said would need to be transferred to the estate executors. SJP said it would need the Grant of Probate to do this. SJP provided the bond valuation at date of death. It explained what would need to happen to give effect in due course to the executors' wishes according to whether the bond was to be sold, transferred into another name or part sold and part transferred to a beneficiary.

21 March 2019         Mrs S' solicitor sent SJP an official copy of the recently issued Grant of Probate which appointed Mrs S as the sole executor.

28 March 2019         SJP confirmed ownership of the bond was transferred to Mrs S in her capacity as the executor of Ms R's estate.

18 July 2019           SJP received a letter from Mrs S' solicitor asking whether the bond could be surrendered, and if so, if SJP would confirm the value and provide the necessary forms.

19 July 2019           SJP responded saying it needed to see a LOA from Mrs S before it could disclose further information about the bond to the solicitor. It provided a contact phone number and invited the solicitor to get in touch if there were any questions or other matters arising.

24 July 2019 SJP received a letter back from Mrs S' solicitor querying the need for Mrs S' authority to release information when it had previously provided a bond valuation and the solicitors were also named on the Grant of Probate. The solicitor didn't consider a LOA was necessary and said this would incur additional costs for the estate.

10 October 2019 SJP phoned Mrs S' solicitor in order to explain why authority was needed but was told the solicitor was not available and that they would call back.

25 October 2019 SJP received a letter from Mrs S' solicitor enclosing a signed letter of authority ('LOA') with a request to accept this as authority for the solicitor to act in the matter on Mrs S behalf.

12 November 2019 SJP recorded the authority and confirmed to the solicitor this had been done.

27 December 2019 SJP received a letter from Mrs S' solicitor requesting the surrender value.

31 December 2019 SJP confirmed surrender value to Mrs S' solicitor.

10 January 2020 SJP received a letter from Mrs S' solicitor asking it to confirm the surrender requirements it had originally asked for on 18 July 2019.

16 January 2020 SJP intended to send the necessary withdrawal form that Mrs S needed to complete but has since said it can't be certain this was sent.

6 March 2020 SJP received a letter from Mrs S' solicitor chasing up its request for information about surrender requirements as it hadn't received any response to the 11 January letter (see above).

12 March 2020 SJP sent the withdrawal form to Mrs S' solicitor.

20 April 2020 SJP received the withdrawal form requesting full surrender and this was forwarded to the relevant department for processing.

20 May 2020 Mrs S' solicitor chased up what was happening with the bond surrender.

27 July 2020 Mrs S' solicitor contacted SJP to find out information about the bond surrender and learned that full surrender requests made after 18 March 2020 hadn't been possible due to one of the funds being suspended.

14 August 2020 SJP spoke to Mrs S' solicitor on the phone and also wrote the same day apologising that information about the suspended fund hadn't been communicated to Mrs S' solicitor due to an administrative error – which it had repeated later. SJP confirmed that Mrs S would need to complete new paperwork to go ahead with a partial withdrawal request for the remaining funds and said that it would complete the full surrender as soon as the suspension was lifted.

19 August 2020 Mrs S' solicitor returned the signed authority for the partial withdrawal to SJP.

10 September 2020 the fund suspension was removed and the full bond surrendered.

12 October 2020 Mrs S' solicitor wrote to SJP enquiring about the withdrawal proceeds.

6 November 2020      payment for the sum of £65,567.92 was deposited into Mrs S' nominated bank account.

There was a continuing dialogue between SJP and Mrs S' solicitor about the issues experienced with the surrender. In summary, SJP admitted there had been significant shortcomings in the way it had dealt with the bond surrender. SJP apologised and confirmed that pertinent feedback had been provided, it acknowledged that Mrs S' solicitor would need to pass on to the estate the extra costs of £280.80 he'd incurred on Mrs S' behalf and said SJP would be glad to refund these. Additionally, SJP said it would also make an ex gratia payment to Mrs S which would take the total amount it would pay her up to £500.

Mrs S remained unhappy with SJP's responses and brought her complaint to us.

Our investigator looked into the points of concern Mrs S had raised. He felt that if the bond proceeds would've been more had it been surrendered when SJP received the completed surrender form in April 2020, then it was fair that SJP should compensate the estate for any loss. This would include SJP paying interest on the price difference if the estate had lost out financially. And he considered that the £500 payment SJP had offered covered all the additional legal costs incurred by Mrs S and the estate. So he felt this was a broadly fair way to settle the complaint.

Further correspondence followed and SJP subsequently revised its offer.

SJP said it was willing to use the date that it received the LOA from SJP as the comparison date and the surrender value on that date (25 October 2019) was £65,800.10 – which was £232.18 more than the actual value of the surrender proceeds in September 2020. So SJP offered to repay this amount, plus interest at 8% simple per year up until the date it pays. In addition, it offered a further £250 on top of this to reflect delays there had been since October 2019.

Mrs S didn't feel this went far enough to reflect how unhappy she was about the way SJP handled the matter and she didn't believe the amount offered was adequate recompense.

The complaint came to me to decide. I issued a provisional decision.

### **What I said in my provisional decision**

Here are some of the main things I said.

'It's not in dispute that Mrs S has suffered significant inconvenience during the course of her dealings with SJP. I sympathise with Mrs S and I understand that what's happened has been upsetting and frustrating for her.

But I think it's important to make clear at the outset that Mrs S brings this complaint in her capacity as the executor representing Ms R's estate and not in her personal capacity. This is an important distinction which goes to the heart of what this service can do in this situation and I must keep in mind that this complaint relates to the impact on the estate of the way SJP has handled the bond surrender.

Under the rules governing our service, Mrs S (as an executor of Ms R's estate) isn't entitled to any compensation for the upset and inconvenience she experienced in the course of carrying out her duties as executor. We can only tell a business to pay compensation for upset and inconvenience experienced by its client, not by a third party. Here, the 'client' is the late Ms R. Following her death, the investment bond remained within her estate and in

this particular situation, the capacity in which Mrs S has dealings with SJP is as a representative of the estate.

Mrs S was throughout acting as the appointed representative of Ms R's estate when dealing with SJP so she's not entitled to receive any compensation or other redress in her capacity as executor - nor is the solicitor she instructed.

I can award redress to the estate if there is evidence to show that SJP made an error or acted unfairly or unreasonably in a way that impacted adversely on the estate and this resulted in the estate losing out in money terms. So that's the focus of my decision.

What happened is not disputed by SJP. The timeline I've set out above shows that there were occasions when SJP failed to respond to Mrs S' solicitor as promptly as it ought to have done. It failed to address reasonable questions in a timely way which meant it didn't provide the information (or sometimes the required forms) to enable Mrs S to progress the bond surrender and so delayed the administration of the estate. SJP didn't action matters as promptly as Mrs S was reasonably entitled to expect when it had her instructions to proceed with the surrender. The situation was aggravated by the fact that there was a suspension imposed on one of the funds included in the bond surrender and whilst that wasn't SJP's fault, it should've told her about this issue sooner. SJP has acknowledged the significant shortcomings on its part and engaged with Mrs S' solicitor and subsequently with this service in trying to reach an agreed resolution.

Broadly speaking, as the background circumstances are mainly agreed between the parties, I don't think I need to say more about what happened and I will concentrate on the question of redress. In other words, what should SJP fairly or reasonably be expected to do to put things right and provide redress so that what happened doesn't result in any financial loss to the estate.

My starting point is to think about when the bond could reasonably have been sold if SJP had dealt with matters in a fair and reasonable way.

The Grant of Probate confirmed that Mrs S was the sole executor of the estate. SJP said this meant Mrs S was now the person entitled to 'ownership' of the bond and this is why it needed Mrs S' authority to disclose information to anyone else. It said it required a LOA signed and dated in order to protect client data. I don't think that was an unreasonable requirement. Mrs S' solicitor had only previously sent SJP Ms R's death certificate and told SJP '*...we act for the executors*' before probate had been granted.

When SJP received a letter from Mrs S' solicitor on 18 July 2019 asking whether the bond could be surrendered, and if so, if SJP would confirm the value and provide the necessary forms, SJP responded the next day asking for a LOA. Within five days, Mrs S' solicitor wrote back to SJP challenging the need for a LOA. The matter then seems to have been left in abeyance – Mrs S' solicitor didn't follow up his questions about why the LOA was required and it was some two and half months later when SJP phoned Mrs S' solicitor to discuss this. Unable to speak to anyone about the matter, SJP understood that the solicitor would call back. In the event, the solicitor provided the signed LOA shortly afterwards without further discussion.

I find it was fair for SJP to require Mrs S to provide a letter of authority before engaging further with her solicitor in relation to the bond surrender. SJP needed to be satisfied that Mrs S wanted it to deal directly with the solicitor regarding the bond transfer as this involved disclosure of information that SJP was obliged to keep secure and handle only in accordance with data protection requirements. A signed LOA seems to me to be a simple and straightforward way to deal quickly with this issue. And after questioning the need for

this, Mrs S' solicitor seems to have accepted that providing the LOA was the best way forward. I don't find in these circumstances that SJP can fairly be said to have been wholly responsible for delay up to the point it received the completed LOA on 25 October 2019.

But Mrs S was reasonably entitled to expect SJP to proceed with the surrender as soon as it had her signed LOA – and that evidently didn't happen. So, it's fair and reasonable to expect SJP to compensate the estate for any resulting loss.

In terms of thinking about the starting point for working out redress, I agree with SJP. If matters had progressed as Mrs S was reasonably entitled to expect after she enquired about surrender in July, I think it's fair to assume that the surrender could have been arranged in October 2019. SJP received the signed LOA on 25 October 2019, so this would have been the earliest opportunity SJP could potentially have acted on instructions to surrender the bond.

The principle behind redress is to put the estate into the position it would have been in had SJP not delayed matters after receiving the LOA. So, SJP needs to compare the actual surrender value achieved with the full surrender value that could have been achieved on 25 October 2019. If the estate is worse off in money terms because the surrender didn't happen on 25 October 2019, then SJP needs to pay that shortfall to Mrs S so the estate doesn't lose out because of this. It is usual to award interest in these circumstances and SJP has already agreed to provide redress on this basis with interest in line with the usual rate we would expect.

This leaves outstanding the question of any additional costs the estate has to pay resulting from shortcomings in the service SJP provided in relation to this matter. I understand the solicitor previously informed SJP that these amounted to £280.80 and SJP has already said it will gladly refund this amount. I agree that it's fair and reasonable that SJP should cover those extra costs to avoid the estate having to pay these.

I don't know if those costs have already been paid by SJP. The solicitor's extra costs aren't mentioned as part of SJP's most recent offer to make an ex gratia payment of £250. But I'm mindful that this amount alone wouldn't be sufficient to cover the solicitor's costs mentioned above if they haven't yet been paid.

I appreciate that Mrs S has continued to instruct her solicitor since this costs information was provided in March 2021. But I've kept in mind that SJP is only required to cover the extra costs that the estate would otherwise have to pay – not the solicitor's costs for acting on Mrs S's behalf generally. As Mrs S brought her complaint to this service a few months after SJP made this offer and given that SJP has engaged with us since in trying to settle this complaint, I don't consider in these circumstances that it would be fair to tell it to refund any further costs.

I've set out below the steps SJP needs to take to put things right.

Whilst I have summarised the main issues in my own words, sometimes in less detail than Mrs S, and I haven't commented on everything Mrs S has mentioned, that's because I've concentrated on her main complaint about the amount of redress. This reflects the fact that we provide an informal complaints handling service as a free alternative to the courts. I hope that the way I've set things out is helpful in explaining how I've reached my decision and Mrs S will feel that her complaint has been fully considered by the Financial Ombudsman Service.'

## **What the parties said in response to my provisional decision**

I have heard nothing further from either party and the deadline for responses has now passed so I think it's reasonable for me to proceed with my review of this complaint.

## **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.

Given that I've not received any further evidence or comment that changes my mind about this complaint, I confirm the conclusions I reached in my provisional decision.

## **Putting things right**

SJP has provided information that showed:

- Full surrender value on the unit price date of 25 October 2019 = £65,800.10
- Actual full surrender proceeds received after surrender on the unit price date of 10 September 2020 = £65,567.92.
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This difference in value meant there was a short fall of £232.18 to the estate.

To put things right St James's Place UK plc should pay Mrs S, in her capacity as the executor of Ms R's estate, as follows:

- the amount of £232.18 plus \*8% simple interest per year calculated from 25 October 2019 to the date of settlement, and
- £280.80 in respect of solicitor's costs. If this amount has been paid already, then SJP is not required to make any further payment in respect of costs.

\*Income tax may be payable on this interest. If SJP deducts income tax from the interest, it should tell Mrs S how much has been taken off and give her a tax deduction certificate in respect of interest if she asks for one, so she can reclaim the tax on this interest from HM Revenue & Customs, if appropriate.

## **My final decision**

I uphold this complaint and direct St James's Place UK plc to take the steps set out above to put things right for Ms R's estate.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Ms R to accept or reject my decision before 15 June 2023.

Susan Webb  
**Ombudsman**