

## **The complaint**

Mr A and Mrs A, as trustees, complain on behalf of a Discretionary Trust ('ADT') – held in their names about St. James's Place Wealth Management Plc ('SJP').

In summary, Mr A says that on 10 March 2022 SJP failed to carry out their instructions to transfer all bonds held within the ADT portfolio to the SJP Life Money Market Fund ('MMF').

To put things right, he'd like compensation for any financial loss suffered.

## **What happened**

The ADT portfolio contained four bonds. On 10 March 2022, Mr A called his adviser in order to instruct him to transfer all bonds to MMF, but his adviser wasn't available – so instead he called the administration to provide instructions.

Although Mr A was initially led to believe that his instructions had been carried out, a subsequent letter confirmed that only £13,995 had been transferred to MMF. I understand that this was a fraction of the ADT which was valued at around £437,000.

In due course the adviser contacted Mr A about the error, it was evident that the instructions hadn't been completed. Following further correspondence, on 29 March 2022 it was clear that the value of the ADT had increased by £20,000 (to approximately £457,000). So, the bonds were left as they were, and no further funds were transferred to MMF. I understand that this is the point of contention. In June 2022, Mr A made some fund switches after which he complained to SJP.

In a Final Response Letter (FRL) dated 16 November 2022, SJP upheld the complaint on the basis that it failed to carry out the trustees' instructions. It offered to put the ADT in the position it would've been in had the transfer taken place – as per the trustee's instructions – on 10 March 2022. It also offered Mr A £100 compensation for the distress and inconvenience caused, and £200 for the time taken to respond to his complaint.

Unhappy with the response, and compensation offered, Mr A referred the complaint to our service.

One of our investigators considered the complaint but didn't think it should be upheld, on the basis that the offer by SJP was fair and reasonable in the circumstances. In summary, he said:

- On 10 March 2022, SJP made an error by not carrying out the trustees' instructions. However, it did nothing wrong by not subsequently transferring the bonds to MMF on 29 March 2023.
- The crux of the complaint is what happened between 10 March 2022 (when the instructions were given) and 31 March 2022 (when it was decided that the funds wouldn't be transferred).
- SJP maintains it was made clear that the transfer wouldn't happen as a result of the fund value increasing by around £20,000. But Mr A maintains that the transfer

should've happened (automatically) on 29 March 2022, after he was notified of this increase in value.

- The error had been noticed fairly quickly (on 18 March 2022).
- On 21 March 2022 the adviser said that he'd look into it but *"It may take a while to be sorted"*.
- On 23 March 2022, Mr A wrote:  
*"Hello X  
Something to make you smile perhaps.  
With your final comment "it may take a time to get sorted" ringing in my ears and the possible implications of a delay making a nonsense of the situation I suggest we drop the whole issue as if things never happened (my emphasis). This should make everybody happy and relieve your admin people of, amongst other things, an onerous burden.  
Can you do this please?  
Let me know as I may choose to modify the asset allocations in a while – through you of course...."*
- Although Mr A says there are three interpretations – namely, leaving the mistake; recalculating and starting the process again; or canceling the 10 March 2022 instructions – the adviser can't be blamed for interpreting matters the way he did.
- On 24 March 2022, the adviser responded by saying that if there was an error SJP would put things right.
- On 27 March 2022, Mr A acknowledged the email, and was encouraged by the suggestion that the ADT had benefitted. He queried if he could reallocate the funds after the matter was resolved.
- On 29 March 2022, the adviser wrote the following email:  
*"Thanks for your patience and letting the process run. We will leave the plans as they are as you have been advantaged by our error, I'm just waiting for final confirmation of this from the administration centre together with a calculation of the difference. As you can see one of Mrs A's (name anonymised) plans does have a money market.  
As no action is being taken you can switch in the usual way from the current fund mix. I will send fuller details when I have them just wanted to let you know."*
- On 31 March 2022, the adviser sent a follow up email:  
*"Following our e-mail's regarding your call to the Administration centre I just want to finally confirm we have now concluded the case. Apologies again that we did not correctly implement your instructions as we should have done, we have reviewed the call directly with the call handler to try and ensure that this doesn't happen again. Fortunately, in this case your [sic] have not suffered any loss by our error, as detailed below you are actually better off so I've agreed with our administration centre that we will leave the current fund mix as it is. We can of course make any further switches as normal if requested. As disused [sic] the error has actually been to your advantage as detailed below. Fortunately, in this instance across the four bonds you are better off than you would have been if you had moved to the money market fund by around £20,000 (as at 29th March prices).  
One point to make is that Mr A's Trust IB67323824 detailed below does now have a slightly different mix to the other bonds as it has just over 11% in the money market fund, this was the one bond where a fund switch was made."*
- The final paragraph of the email dated 31 March 2022 confirms that nothing will be done – in line with Mr A's wishes to drop the whole issue, as if things never happened.
- The adviser was entitled to think that Mr A was pleased with the increase in value and in the absence of any express intentions to do anything different, the adviser has

done nothing wrong by not transferring the remaining bond to MMF by the end of March 2022.

- The above notwithstanding, SJP at the end of its investigation found that the values of the funds had reduced by September 2022 and were lower than they were on 10 March 2022. So, it offered to put the fund in the position it would've been in had the instructions to switch to MMF been processed on 10 March 2022 which is fair and reasonable in the circumstances.
- SJP has also offered Mr A £100 compensation for the inconvenience caused and £200 for the time taken to deal with its complaint. Whilst complaint handling isn't a regulated activity – so he can't comment on that part of the complaint – the redress offered is broadly fair and reasonable.

Mr A disagreed with the investigator's view and asked for an ombudsman's decision. There's been much correspondence between him, the investigator and SJP. His latest submissions include a 24-page response in which he discussed various subject matter including reasons behind the transfer request, the transfer instructions, the error and what happened afterwards – followed by his overall conclusions.

As no agreement has been reached, the matter has been passed to me for review.

### **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 agree with the investigator's conclusion for much the same reasons.

I'm going to uphold this complaint on the basis that SJP made an error, however the redress offered is broadly fair and reasonable.

Whilst SJP accepts that it made an error – in that on 10 March 2022 it failed to carry out the trustees' instructions to transfer all bonds held within the ADT portfolio to the MMF – I note it maintains that it wasn't at fault for subsequently not carrying out the transfer – as originally instructed – on 29 March 2022.

I agree with SJP's conclusion but on the basis that the latter situation wouldn't have even arisen – and neither would the increase in value – if SJP had done what it was supposed to do on 10 March 2022. Therefore, in the circumstances Mr A's argument – about what SJP should've subsequently done on 29 March 2022 – is academic. I note Mr A maintains that his instructions were never amended or withdrawn.

I note that without the benefit of hindsight, the trustees wouldn't have known about the increase in value, nor another (appropriate) date to transfer, so I don't think SJP has done anything wrong by not doing so.

SJP nevertheless offered compensation based on what would've happened with the ADT had the instructions been carried out on 10 March 2022 along with £100 compensation for distress and inconvenience caused and £200 for the time taken to deal with the complaint. Overall, and on balance, notwithstanding the investigator's comments regarding redress, I think the compensation offered is broadly fair and reasonable.

Before I explain further why this is the case, I think it's important for me to note I very much recognise the trustees' strength of feeling about this matter. I'm also very sorry for the health issues that they're experiencing. I appreciate this must be a difficult time for them.

Mr A has provided detailed submissions to support the complaint, which I've read and considered carefully. However, I hope he and Mrs A won't take the fact my findings focus on what I consider to be the central issues, and not in as much detail, as a discourtesy.

The purpose of my decision isn't to address every single point raised under a separate subject heading, it's not what I'm required to do in order to reach a decision in this case. In other words, I don't have to comment upon every single point made.

My role is to consider the evidence presented by Mr A and SJP, and reach what I think is an independent, fair, and reasonable decision based on the facts of the case. In the circumstances, I don't need any further evidence to make my decision.

I uphold this complaint, in summary, for the following key reasons:

- There's no dispute that on 10 March 2022, SJP failed to carry out the trustees' instructions to transfer all bonds held within the ADT portfolio to the MMF. It accepts that due to an internal error this wasn't fully done. I note that shortly thereafter, on 18 March 2022 the error was discovered by the adviser and brought to the trustees' attention before the additional correspondence began.
- I don't think there's any dispute in terms of the trustees' account of what happened during this time. I've also no reason to question their reasoning behind their instructions, the timing of it, and the issues the trust was considering in relation to inheritance tax (IHT) planning. Although, I don't know if this thought process was made clear to SJP beforehand.
- Based on what Mr A says, on balance I'm persuaded that the initial instructions were final, it wasn't dependent on anything, and there was no suggestion that they should be abandoned, if they weren't successfully carried out. I'm mindful that the initial instructions weren't 'modified nor withdrawn'.
- I note the adviser wasn't available to answer Mr A's call, and that's why he called the business, however this isn't something I can blame the adviser for. An adviser can't reasonably be expected to be available all of the time.
- Despite what Mr A says, I'm not persuaded that SJP should've reattempted the transfer on 29 March 2022, or that it was wrong not to do so. In any event, this part of the complaint wouldn't have even arisen had SJP successfully done what it was instructed to do in the first place.
- Even if I was persuaded that SJP should've, which I'm not, I think the wording of Mr A's email dated 23 March 2022 – namely, *"...I suggest we drop the whole issue as if things never happened. This should make everybody happy and relieve your admin people of, amongst other things, an onerous burden."* would've quite rightly persuaded the adviser to leave things as they were, rather than to pursue the initial transfer instructions. In other words, I think the adviser was entitled to think that Mr A was pleased with the increase. So, in the circumstances and on balance, I don't agree with Mr A that the funds should've been switched to MMF on 29 March 2022.
- Whilst it's possible to have different interpretations, for the reasons set out above I don't think SJP's interpretation was unreasonable in the circumstances. I can't safely say that the adviser should've interpreted the email in an alternate way as suggested by Mr A in his latest submissions.
- Notwithstanding what Mr A says about his losses, I note SJP has upheld the complaint on the basis that it failed to carry out the instructions on 10 March 2022. I note it has offered to place the ADT in the position it would've been in had the error not occurred. In other words, had the 10 March 2022 instructions been carried out, which I think is broadly fair and reasonable in the circumstances.
- It has also offered £100 compensation for the distress and inconvenience, and £200 for the delays which also seem to form a part of the distress and inconvenience.

Notwithstanding the investigator's comments, I think the redress is broadly fair and reasonable.

I appreciate that Mr A and Mrs A will be thoroughly unhappy that despite upholding this complaint, I've not given them what they want.

### **My final decision**

For the reasons set out above, my final decision is that St. James's Place Wealth Management Plc having offered to do so, should pay the following redress:

- Put the ADT in the position it would've been in had the 10 March 2022 instructions been carried out.
- Pay the Mr A and Mrs A £300 compensation for the distress and inconvenience and delays caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A and Mr A to accept or reject my decision before 12 April 2024.

Dara Islam  
**Ombudsman**