

## The complaint

Mr M has complained about the advice he received from St James's Place Wealth Management Plc ('SJPWM') in June and August 2021. He says he has suffered financially as a result and wants the funds repaid to him with interest.

## What happened

Mr M had been a client of SJPWM for several years investing in ISAs, investment bonds and unit trusts. On 24 June 2021 SJPWM invested £150,000 of his funds into a St James's Place bond within a Loan Trust. Later that year an additional £70,000 was invested into a further existing investment bond. Mr M says he didn't receive any advice prior to the investment and that inheritance tax ('IHT') wasn't an issue for him or his partner. I shall refer to Mr M's partner as 'Miss B' in my decision.

Mr M was the settlor of the Loan Trust as well as a trustee along with Miss B and a third party I shall refer to as 'Mr T' in my decision.

In July 2023 Mr M raised his concerns about the advice he had been given by SJPWM. SJPWM responded on 23 November 2023 not upholding the complaint. It said;

- The June 2021 recommendation was made after a meeting between Mr M and his SJPWM adviser. Mr M indicated he wanted to invest over the long term and avoid any IHT on future investment growth. The Loan Trust was to reduce a tax liability and mitigate IHT for potential beneficiaries.
- A suitability report was issued on 14 June 2021 which confirmed Mr M had an IHT liability of £641,483 and the Loan Trust investment aligned with Mr M's objectives.
- It detailed what was said in the Suitability Report and that Mr M wished to invest for capital growth and was keen not to increase his IHT liability.
- There was no note of Mr M objecting to the investment at the time, but he did raise concerns in August 2021 which his adviser addressed.
- Mr M had agreed to the additional investment of £70,000 on 2 September 2021 into an existing investment bond. He had been provided with a Suitability Report on 23 August 2021 further to meeting with his adviser. His investment objective was for capital growth over the medium term.
- It concluded by saying Mr M was made aware of the investment costs and the risks. For the latter investment Mr M had had doubts about the benefit from the growth within the Loan Trust but once that was clarified he was happy to invest an additional amount into his existing investment bond.
- It offered Mr M £200 for the delay in responding to his complaint.

Mr M wasn't happy with the outcome and brought his complaint to the Financial Ombudsman Service. Our investigator who considered the complaint thought it should be upheld. She said;

- Mr M said that he never received the Suitability Report of 14 June 2021 which resulted in the investment of £150,000 into the Loan Trust.
- JPWM had recorded that Mr M worried about his investments. Neither Mr M nor Miss B had any dependents, and it was recorded they didn't feel the need for any form of protection. The investigator didn't think the fact find document from the time of the advice adequately explained Mr M's investment objectives or reasons why IHT was important to him considering dependents weren't an issue.
- SJPWM didn't find out exactly why a Loan Trust investment bond was suitable as it had an element of life cover that wasn't important to Mr M.
- The £150,000 investment recommendation didn't cover the whole of the IHT liability and there wasn't any explanation of how the whole liability could be mitigated.
- Mr M wanted to retire in 2025 which was four years after the investment was recommended and wanted to retain access to his capital rather than it being tied into a bond he couldn't exit until 2027 without incurring fees.
- The Loan Trust wasn't structured to pay any IHT upon Mr M's death and only the growth on the bond would be outside of his estate. The benefits to Miss B upon his death didn't outweigh the benefits to Mr M during his lifetime of having access to the funds in a cash deposit type investment.
- The investment was too high risk for Mr M as he was recorded as being a 'nervous' investor. Investing into SJPWM's 'ordinary investment portfolios' rather than the 'retirement portfolio' had nothing to do with Mr M's attitude to risk.
- There wasn't any evidence to explain why the additional £70,000 investment was suitable. Mr M wanted to reduce his exposure to risk, not increase it.
- Mr M had complained about the delay in SJPWM's response to his complaint, but it had given him referral rights to this service within the regulatory timeframe. The investigator didn't uphold this element of Mr M's complaint.
- To put the matter right, for the £150,000 the investigator recommended that SJPWM pay Mr M 8% interest on the amounts that had been returned to him – £141,977.39 from the date of investment to the date of encashment – 29 January 2024, and a further £3,323.41 from the date of investment to the date of repayment – 13 June 2024. He should also be repaid the losses incurred – £4,699.20 – plus 8% interest from the date of investment to the date of settlement. The £70,000 was to be refunded to him plus 8% interest to the date of settlement.
- SJPWM was also to pay Mr M £400 for the distress he had been caused.

Mr M accepted the proposed outcome, but SJPWM didn't agree. It said;

- The 14 June 2021 Suitability Report did explain the recommendation to establish the Loan Trust. Mr M wanted to focus on IHT, and investment planning and his objective was to invest for capital growth without his IHT liability increasing. There would be a liability upon his death and the Loan Trust would cap that liability for the benefit of Miss B.
- It was satisfied the Suitability Report had been sent to Mr M and to the correct address.
- There was no written request for Mr M to agree to the investment recommendation of £150,000 but the trustees all signed the Trust document so they must have been happy with the investment choice. Mr M was further sent a confirmation letter of the investment being made and included the Investment Certificate which he didn't question.

- The objective for the investment of £70,000 was for capital growth. Risk was discussed and the recommendation aligned with Mr M's stated medium attitude to risk. After investment Mr M retained £216,000 in cash so had the capacity for loss and wasn't relying on the money for anything specific.
- After investment, Mr M met with his adviser many times and he didn't raise any concerns about the Loan Trust until July 2023.
- It didn't agree with the interest rate of 8% on any redress for the whole period. Bank of England Fixed Average from the date of investment to the date of encashment was more appropriate and 8% thereafter.

The investigator responded to say that for the £70,000 investment redress should be a return of the difference between the amount returned to Mr M and the original investment plus 8% simple interest. But SJPWM's comments didn't change her view.

As the complaint remained unresolved and was to be decided by an ombudsman SJPWM provided a further submission for my consideration. It said;

- For the investment into the Loan Trust, as Miss B was the sole life assured the investment bond would cease as the life assurance contract would pay out on death.
- The recommendation was suitable as Mr M was undertaking IHT planning which would benefit Miss B as there would be an IHT liability on his death. He retained access to the capital, but the growth would be outside of his estate.
- For the £70,000 investment, this was added to an existing investment bond and Mr M was the sole life assured.

### **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.

After doing so, I've reached the same conclusion as the investigator and broadly for the same reasons. I'll explain why.

#### Mr M's circumstances

Mr M had used the services of his SJPWM adviser for seven years. He held ISAs, unit trusts and investment bonds and sought advice about pension contributions.

Mr M was 56 years of age and co-habiting with Miss B. His annual income was £53,000, he had no debts and low overheads. He had no material health issues that could impact on the advice provided. Mr M and Miss B both ran their own separate businesses.

As mentioned, Mr M already held investments at the time. Three investment bonds valued at just over £248,000, a unit trust of just under £43,200 and an ISA account valued at over £333,000. His properties were valued at £1.6m and he had cash in his sole name of £30,830 plus jointly with Miss B he held cash of just under £400,000, some of which was in company bank accounts. SJPWM said this previous investment experience demonstrated considerable investment experience. Mr M's assets were valued at £2,053,707 with a potential IHT liability of £691,483.

Mr M had previously held investments that qualified for Business Property Relief but didn't want to commit to that type of planning at the time;

'I have no need to offset an inheritance tax burden on either mine or my partner, [Miss B's] second death. We have no children nor immediate family who we feel strongly should benefit from our estate and I do not feel I should have to justify these comments further, as this would have been very clear if [the adviser] had taken the time to understand my needs and help me understand correctly what he was recommending.'

In March 2017 the fact find document recorded that Mr M and Miss B weren't going to retire yet but 'continue to save for their retirement...' and in February 2019 its recorded Mr M and Miss B were 'Looking to retire at age 60 – wants to enhance funds at retirement.' So, the advice given in June and August 2021 wasn't far away from Mr M's intended retirement age.

#### Mr M's attitude to risk

SJPWM's fact find records that in March 2017;

'Mr M and [Miss B] have invested into ISA[s] for some considerable time now, and want to continue to do from funds on deposit. They are attracted by the capital growth and want to use these investments to help provide them with an income when they retire.

Objectives are

To give this money the potential to grow by more than a bank/savings account and by more than increases in the cost of living...

Wish to take steps to best ensure that ongoing growth and future proceeds of the investment are free from income tax and CGT [capital gains tax].'

The 14 June 2021 suitability report recorded it was agreed that Mr M was a medium risk investor on SJPWM's 'risk spectrum' and that he wanted his capital to keep pace with inflation and to invest for at least five years. He wanted the potential for better long-term returns and was 'comfortable with your capital being invested in equities, some of it overseas, bonds and in some cases property. You realise there may be significant falls in the value of your investments.'

The Suitability Report went on to say;

#### 'Determining Your Attitude to Risk (ATR)

We had a conversation about investment risk as part of our discussions. Some key factors we discussed were your objectives, your investment experience, the time horizon over which you are investing and your attitude to, and ability to withstand, investment losses. Each of these areas is captured in more detail below.

[Mr M]

A fall in value of this investment in the short term would not have a significant impact on your standard of living because you have sufficient emergency funds, assets and investments to cover any short term liabilities.

You intend to use your investment to further reduce the Inheritance Tax Liability on your Estate. With this in mind, the time frame for your investment into you Loan Plan is 5 to 15 years.

The objective of the investment for both of you is capital growth. Your history of previous investment decisions demonstrates considerable investment experience. This is demonstrated by a history of investing in your SJP Investment Bonds, Retirement Account, ISA, and ITS solutions.' [my emphasis]

I'm not persuaded that SJPWM has been able to evidence how it assessed Mr M's attitude to risk. There is nothing in the above 'Determining Your Attitude to Risk' section of the Suitability Report that shows any meaningful assessment about Mr M's individual attitude to risk. Rather it's a reflection of his ability to withstand losses, his wish to 'further reduce' his IHT liability, his investment objectives and previous investment experience.

I asked SJPWM for a copy of its Guide to Risk and Reward that was relevant at the time of the advice was given but it didn't reply. So, in the absence of anything further to the above statement in the Suitability Report I've not been given anything to understand how Mr M's attitude to risk was ascertained.

I also asked Mr M for his recollections about the process went through to establish his attitude to risk. He said he felt this was something the adviser 'settled on arbitrarily' and he couldn't remember 'a formal process that tried to settle on a risk profile that was relevant to our needs, objectives, preferences and situation.' So overall, I'm not convinced that SJPWM has been able to evidence how it established Mr M's acceptable level of risk or whether a medium attitude to risk was right for him.

That being said, I've gone on to consider whether the investment advice given to Mr M was suitable for him given his circumstances and investment objectives etc.

#### The June 2021 advice

The 'Client meeting summary' of 14 June 2021 was that the adviser 'met with [Mr M] to discuss Investment Planning' so at this point I can't see any reference to the need for IHT planning. But I note the Suitability Report referred to Mr M's 'Inheritance Tax Planning Objectives' as being to prevent his IHT liability from increasing.

The Suitability Report came about further to the recent discussion on 14 June 2021 and stated that Mr M 'wanted to focus on Inheritance Tax and Investment Planning.' However, Mr M hadn't previously carried out any IHT planning as recorded in the Suitability Report so I can't see where the statement that Mr M wanted to 'further reduce the Inheritance Tax Liability on your Estate' came from or the accuracy of it. And up until this point, Mr M hadn't felt the need for IHT mitigation or similar protections in the absence of any dependents in any event.

As Mr M and Miss B weren't married, there would be an inheritance tax liability on Mr M's estate in the event of his death. Mr M and Miss B didn't have children and the adviser's fact find document recorded in February 2020 that Mr M and Miss B;

'....do not have any protection plans in place. They have no dependents and don't feel they need protections.'

This suggests to me that Mr M was only looking to protect his estate from IHT for the benefit of Miss B as put to him by SJPWM. And the Suitability Report suggests this is correct as it said 'The life assured on your St. James's Place Loan Plan will be [Miss B]. This will ensure that the investment can continue should you die before [Miss B]'. I see from an internal SJPWM email prior to the June 2021 meeting it refers to the potential advice Mr M could be given which says;

'Only thing I can think of would be IHT planning (how relevant is this for [Mr M]?)...although IHT planning isn't a driver for them, it may still be relevant as they have assets above NRB's [nil rate band] (they won't qualify for RNRB [residence nil rate band] as they have no direct descendants) so as there is likely to be an IHT liability is a DGP [discounted gift plan] ... or a loan plan possibly more beneficial if they know who they want to leave their estate to?'

I note in Mr M making his complaint to SJPWM he said 'We do not have children and Inheritance Tax when we are both gone is not a concern. On the contrary, this investment seems to limit our flexibility to spend the money in our lifetimes.' And in response to a question I asked, Mr M said the Loan Trust 'locked money away when we were planning towards retirement and might need access, and the Inheritance Tax benefits are of no interest to us when we are both dead.'

In the Suitability Report Mr M's 'Objectives, Needs and Circumstances' were recorded as being 'to invest for capital growth and prevent your Inheritance Tax liability from increasing. You want to retain access to your money but do not wish any growth to further exacerbate your Inheritance Tax liability.'

The key factors the adviser took into consideration were;

- 'the ability to prevent the Inheritance Tax potentially due on the funds increasing;
- to implement planning which allows you to deal with the potential Inheritance Tax liability over the longer term.
- The ability to retain access to the funds;
- The ability to take an income from the funds;
- The level of control you wish to maintain over the funds;
- The ability to retain ownership of the funds.'

The advice was for the £150,000, which had come about from Mr M's disposable income, to be equally split between three funds – the Balanced Portfolio, Deferred Income Portfolio and Managed Funds Portfolio. All the funds were classified by SJPWM as being medium risk. Mr M didn't want to take regular withdrawals.

The adviser's meeting notes of 14 June 2021 records;

'[The adviser] briefly explained the advantage of the loan plan, that would prevent growth on the investment being subject to inheritance tax and this makes sense to them.'

SJPWM's updated fact find document recorded;

'[Mr M] would like to make a £150k investment into a Loan Plan to achieve capital growth without increasing his inheritance tax liability. [Mr M] has a medium ATR [attitude to risk] for this investment as he want[s] to achieve capital growth over the medium to long term.'

Other than the adviser 'briefly' explaining the advantage of the Loan Trust there's nothing in the above that persuades me the adviser engaged in any meaningful conversation with Mr M about his investment objectives or the mechanics of the Loan Trust. The trust itself is a complex instrument and I think Mr M was disadvantaged by not having it explained to him further.

The Loan Trust and investment went ahead, and the August 2021 meeting note recorded that regarding the £150,000 that had been invested into the Loan Trust;

‘However, [Mr M] said that he thought I had explained things well but this was now not what they wanted and as they wanted to travel in future, [Mr M] does not now feel comfortable gifting the growth on £150K bond and a new £70K bond. Even though they have nearly £1.5m and are careful with money, he has become worried that they might spend it all and now do not want the loan plan/s. [The adviser] cannot see them getting through these assets plus his inherited home and ever being short of money and with an approx. 5% pa yield, their wealth could increase by £75K pa before spending their current capital.

We know that [Mr M] can be a worrier but he remains fearful that they may run out of money.

Therefore, please ask admin/tax and technical, if there is a process to retain the investment but dissolve the Loan Trust?’

When the adviser further addressed this in his email to Mr M on 19 August 2021 he said;

‘At our meeting you told me that you have thought about this further and are now uncomfortable that you would not have access to spend the growth on the investment, in addition to having full access to the original investment.’

To unwind the position Mr M was given two options, one was to waive the loan and assign ownership to the beneficiary or demand the trustees repay the loan, but this would incur penalties. To avoid this the adviser said the investment should be held for six years and then a change could be made. However, a further meeting was held on 23 August and once Mr M understood the investment bond wasn’t set up so the growth would go to charities rather than Miss B, he was relieved, and the investment could remain as it was.

Taking all the above into account, I’m not persuaded that Mr M was given advice that was suitable for him. It’s clear from the internal email I’ve quoted above that the potential for mitigating IHT was suggested to Mr M rather than something he sought out. While, in and itself, I don’t think it was wrong of SJPWM to have raised the matter of IHT mitigation to Mr M – it’s clear there would be an IHT liability on his estate – I don’t think the Loan Trust, or how it worked, was sufficiently explained to Mr M to the extent that he understood the implications of it. I asked Mr M about the life assured on the policy and he responded to say, ‘Yes, [Miss B] was the life assured we think, although not sure what that means’ so I’m persuaded that Mr M was unsure about the Loan Trust, what it was trying to achieve and what the end result would be.

Mr M told us that he feels sick and starts shaking when he thinks about what happened and the meeting note of 14 June 2021 referred to Mr M as being nervous about investment markets post Brexit. SJPWM’s internal notes from August 2021 record that ‘we know that [Mr M] can be a worrier but he remains fearful that they may run out of money.’ It’s clear Mr M did worry about his investments and how long his cash – despite SJPWM’s cash flow summary – would last into retirement, so I think it’s evident he was anxious about how his money was invested which suggests to me that a medium risk investment wasn’t right for him when considering the potential volatility and rises and falls in values.

The Loan Trust incurred exit costs for the first six years after it was set up – starting at 6% and going down to 1% - and I think the point Mr M has made about the lack of flexibility is a valid one. It’s recorded that it was Mr M’s intention to retire over the next few years, so I think

this additional cost was prohibitive for his needs. And while the exit costs were given in the Loan Trust application, as I'm satisfied that the Loan Trust wasn't sufficiently explained to Mr M – which was the responsibility of the adviser to explain – then I'm not convinced he would have agreed to the investment.

And the investment bond held within the Loan Trust had an element of life cover which its recorded Mr M and Miss B had decided against taking previously in the absence of having any children or dependents that could have benefited from it. So, I don't think this benefit added any value for Mr M.

It's established that Mr M had assets of over £2m with a potential IHT liability of £691,483. The loan trust recommendation had no impact at all on this existing liability as it was only the growth on the amount invested that would fall outside of the estate. I accept this would have some benefit to him as regards helping to mitigate the increase to his potential IHT liability but in my view this benefit was very limited. And there's no evidence to suggest the adviser discussed how Mr M's estate could be protected from that very significant existing IHT liability or further increases to that liability beyond the £150,000 invested. I accept the Suitability Report did say;

'The Inheritance Tax Planning I have recommended will not fully address your current Inheritance Tax liability and so we need to regularly review the size of your Estate and the planning options available to you. Generally I would recommend that you look to take action in this respect otherwise there is likely to be an Inheritance Tax liability due in the event of your death.

I think this provides an example of the adviser not explaining matters clearly to Mr M when advising him. The adviser said that his recommendation wouldn't fully address Mr M's current IHT liability. But, as I have explained above, it didn't address the current liability at all. It only provided IHT mitigation on future gains on the £150,000 invested.

Overall, the evidence presented to me suggests the IHT recommendation was adviser led without any real assessment of or understanding of Mr M's investment objectives and needs. The above comment from the Suitability Report doesn't provide any indication of how the existing IHT liability was going to be addressed and was misleading in my view given it suggested that the current liability was being addressed. And I think this further evidences that IHT mitigation wasn't a priority for Mr M. If it had been I think the Suitability Report would have included a more substantial comment from the adviser about how he was planning to go about that in the future.

I asked SJPWM why only the growth on the £150,000 of Mr M's estate was to be protected from IHT and not the sum invested. SJPWM didn't reply. So, in the absence of anything to show otherwise, I'm not persuaded that the benefits of the IHT mitigation for a small amount of the total estate outweighed the advantages of Mr M having access to the funds during his lifetime, particularly considering his anxiety about investing and cash flow.

Bearing in mind what I have said above about the lack of evidence about how SJPWM understood Mr M's attitude to risk and decided that medium risk was the right risk category I'm not persuaded that a medium risk approach was right for him. It's clear that Mr M worried about his investments, coupled with his concerns about his cash position in his upcoming retirement, which would suggest that a lower risk or cash deposit type investment should have been explored rather than an investment with a medium level of risk.

Overall, I'm persuaded that Mr M didn't fully understand how the Loan Trust worked or what it was set up to achieve. And if the Loan Trust had been clearly explained to him and he had understood it I'm not convinced he would have agreed to the investment advice. And I'm



satisfied this is evidenced by Mr M's dissatisfaction and nervousness when he contacted SJPWM in August 2021 – just two months after the investment was made – to try and unwind the position. I think it was only at this point that Mr M had any proper understanding of the implications when trying to exit the Loan Trust.

And I'm not satisfied that SJPWM has been able to show that a medium risk investment was right for Mr M, and I am of the opinion a lower level of risk or cash deposit solution would have been more suitable for his needs. So, I uphold this element of the complaint and the matter should be put right as outlined below.

#### Did SJPWM go ahead with the June 2021 investment without providing advice

Mr M has said that he didn't receive the 14 June 2021 Suitability Report. However, I agree with what SJPWM have said about this and think, on the balance of probabilities the Suitability Report was produced and was posted to Mr M at his home address. I appreciate Mr M is adamant he didn't see the Suitability Report, but most mail does reach the correct destination. So, on the balance of probabilities I'm satisfied it was most likely sent and I don't find SJPWM at fault here.

Even if I am wrong on that point, I do note the Suitability Report said;

'I am pleased that you have accepted my recommendation and I have forwarded your application for processing meaning you should receive confirmation of your investment shortly.'

And when Miss B emailed SJPWM on 15 June 2021 she said;

'when we saw [the adviser] yesterday he started filling in a form for [Mr M] and he mentioned that [Mr T] needed to sign the document, we're seeing [Mr T] on Friday evening and thought it might be an opportunity for him to sign...'

This suggests to me that further to the discussion at the meeting of 14 June Mr M had agreed to the investment recommendation and I can see the Trust and Loan Agreement document was signed by the trustees – which included Mr M, Miss B and Mr T – on 17 June, several days after the Suitability Report was issued. Because of this, I think there is sufficient evidence for me to reasonably conclude that it's unlikely the investment went ahead without any discussion with and agreement from Mr M in advance of it being made as shown by the trustees' completion of the Loan Agreement.

#### The August 2021 advice

Further to a meeting of 3 August 2021 a Suitability Report was issued on 23 August. SJPWM's meeting notes for 3 August referred to Mr M and Miss B's wills;

'They said that their Wills were written 12-15 years and [Mr M's] has some to his mum, who has passed away and he would want some to go to charity, although he has not recorded which ones and how much. Mostly he would want his assets to pass to [Miss B] and then onto Charity. [Miss B] said she would want her assets to pass to [Mr M] and some to her nephew and then to Charities.'

And regarding the investment of £70,000, that was originally going to be in Miss B's name the meeting notes said;

'As the new £70k is now to be in [Mr M's] name, rather than [Miss B's] and he now says he does not want to mitigate IHT, what would be allowed to recommend?...'

The Suitability Report recorded that Mr M wanted to focus on investment planning and that he wanted to invest £70,000 from funds held on deposit. Mr M's 'Objectives, Needs and Circumstances' were for capital growth. His assets were updated as being £401,934 in investment bonds, £43,670 in a unit trust, £335,259 in ISAs and cash of £214,503. The funds were to be added to an investment bond already held but which didn't permit the chance of IHT in the future which I consider reasonable bearing in mind the concerns Mr M had raised by this time about the previous Loan Trust investment. The life assured on the bond was Mr M as this was how the bond was originally set up. It said;

'We have discussed and you understand the benefit of adding a younger life assured to ensure the bond can remain invested and passed onto your beneficiary on your death.

This will ensure that the investment can continue should you die.  
As you do not have any younger people as friends or relatives, I recommend the inclusion of another life assured as this will have no bearing on the ownership of the plan but will reduce the risk of the investment being encashed in the event of death. Where additional lives assured are not included, there is an increased risk of your investment coming to an end at the inopportune time.'

The underlying fund was to invest for at least five years into the Strategic Growth Portfolio which SJPWM has told us matched Mr M's medium risk profile about which a 'conversation' had been had. Like the June 2021 advice I haven't been given anything to show how Mr M's medium attitude to risk was arrived at and I maintain my reservations about this in line with my above comments. But in any event, I note from the meeting notes from the time, that the investment was with 'the higher risk profile of strategic growth.'

The meeting notes of 23 August 2021 record that the £70,000 was to be invested 'into a new investment bond with the higher risk profile of strategic growth'. The Strategic Growth portfolio held a Diversified Asset fund about which the adviser warned invested 'mainly in assets which can be difficult to sell at short notice, so you may not be able to sell or switch out of this investment when you want to...' While the Suitability Report did go on to explain that the Strategic Growth portfolio didn't 'include a significant proportion' of the Diversified Assets fund I did ask SJPWM for the Key Investor Information Document so I could explore this further but again this wasn't provided.

And a subsequent meeting note from June 2022 recorded;

'[Mr M] recognises that he slightly increased his own risk by incorporating strategic growth within his investments and is worrying that this increased risk is why the overall funds have been falling.'

...

He repeatedly wanted to know if there was something safer for him to invest in and [the adviser] said we could move to defensive or conservative portfolios which will limit downside and definitely limit upside and asked if he would be responsible for notifying us when he wanted to come back into more active management and he doesn't feel comfortable or confident for this responsibility and [the adviser] said that he doesn't either.

...

[The adviser] did hope that the in retirement portfolios [rather than the ordinary portfolio] might appear more suitable but the initial comparisons haven't shown a

strong case and maybe [the adviser and a colleague] need to dig a little deeper to see if we can demonstrate anything here.

He might be willing to adopt a blended approach with perhaps half going safe and half staying in the recommended portfolios.

While I appreciate the above meeting note is after the event of the June and August 2021 advice, I think it reflects Mr M's concerns and worries. It refers to Mr M recognising 'that he slightly increased his own risk' but that was because of advice from SJPWM. And bearing in mind I'm not convinced that SJPWM has been able to evidence how it ascertained a medium level of risk was right for him I think a lower level of risk may have been more suitable for Mr M. And it's clear from the above that by investing into the Strategic Growth fund it unnecessarily increased the level of risk Mr M was exposed. So, I don't find that the investment advice was suitable so I uphold this complaint point and the matter should be put right as outlined below.

#### Did SJPWM go ahead with the August 2021 investment without providing advice

In making his complaint Mr M has said that that the £70,000 invested was done so without him being given any formal advice, advising him of the relevance to his situation or disclosing the costs and risks involved.

However, similar to the June 2021 advice, Mr M was sent a Suitability Report dated and prepared on 23 August 2021 further to a discussion with his adviser on 3 August 2021 and meeting on 23 August. I accept this was after Mr M had engaged via email with his adviser on 19 August about the £70,000 investment but the Suitability Report says that Mr M had accepted the recommendation, the application had been forwarded for processing and Mr M would receive confirmation of the investment shortly.

So, for similar reasons given about the June 2021 advice, I'm satisfied that on the balance of probabilities its most likely the August 2021 Suitability Report was prepared and sent to Mr M, but he had discussed and agreed to that investment in advance of receiving the Suitability Report. While I accept that in the normal course of events, I would expect for the Suitability Report to have been received by an investor before a recommendation was acted upon, I'm satisfied that Mr M was aware of the investment advice and agreed to it.

So, I don't uphold this part of Mr M's complaint.

In conclusion, I partially uphold Mr M's complaint about the advice he was given in June and August 2021 and this needs to be put right as outlined below. But for the reasons given I don't uphold Mr M's complaint that the investments went ahead without his knowledge or agreement.

For the £150,000 investment I understand from Mr M that the money was deposited with SJPWM on 24 June 2021, and he received two payments on the surrender of the investment, one of £141,977.39 on 29 January 2024 and the other of £3,323.41 on 13 June 2024. Mr M hasn't given any financial details about his investment of £70,000 but I assume that because he is unhappy with the advice received that he has either surrendered it or would be willing to surrender it if he hasn't already done so.

When the investigator upheld the complaint, she recommended that Mr M be given a return of 8% simple interest per annum from the date of investment to the date the funds were returned to Mr M, but I didn't think that was right and made the parties aware of my proposed redress in the event I uphold Mr M's complaint.

Neither party responded so I've not been given anything to suggest either Mr M or SJPWM disagree with my proposal for redress.

### Putting things right

In assessing what would be fair compensation, I consider that my aim should be to put the trust as close to the position it would probably now be in if the trustees had not been given unsuitable advice.

I take the view that the trustees/Mr M would have invested differently. It is not possible to say *precisely* what the trustees/Mr M would have done differently. But I am satisfied that what I have set out below is fair and reasonable given the trust's/Mr M's circumstances and objectives when the trustees/Mr M invested.

### What must SJPWM do?

To compensate the trust/Mr M fairly, SJPWM must:

- Compare the performance of each of the trust's/Mr M's investments with that of the benchmark shown below.
- A separate calculation should be carried out for each investment. The resultant figures should then be added up. If the calculation still shows a loss, that would be the amount payable to the trust.
- SJPWM should also add any interest set out below to the compensation payable.
- Pay to the trust £400 for distress and inconvenience caused.

Income tax may be payable on any interest awarded.

Investment name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
£150,000 invested into the Loan Trust	No longer exists	Average rate from fixed rate bonds	Date of investment	Date(s) ceased to be held	8% simple per year on any loss from the end date to the date of settlement
£70,000 invested into the Investment Bond	No longer exists	Average rate from fixed rate bonds	Date of investment	Date ceased or ceases to be held	8% simple per year on any loss from the end date to the date of settlement

### For each investment:

#### ***Actual value***

This means the actual amount paid or payable 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.

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, SJPWM should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

### **Why is this remedy suitable?**

I have decided on this method of compensation because:

- the trustees/Mr M wanted to achieve a reasonable return without risking any of the trust's capital.
- The average rate for the fixed rate bonds would be a fair measure given the trust's/Mr M's circumstances and objectives. It does not mean that the trustees/Mr M would have invested only in a fixed rate bond. It is the sort of investment return a consumer could have obtained with little risk to their capital.
- The additional interest is for being deprived of the use of any compensation money since the end date.

### **My final decision**

I partially uphold the complaint. My decision is that St James's Place Wealth Management Plc should pay the amount calculated as set out above.

St James's Place Wealth Management Plc should provide details of its calculation to the trust in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M/the trustees to accept or reject my decision before 22 April 2025.

Catherine Langley  
**Ombudsman**