

The complaint

Mrs C, Mrs H, Mr H and Mr P as trustees of the H Trust complain that St. James's Place Wealth Management Plc ("SJP") gave them unsuitable investment advice.

They say SJP failed to give them accurate information regarding their tax obligations and feel they've unnecessarily incurred additional costs, including fees.

What happened

The trustees met with SJP in 2017 to complete a financial review following the creation of the H Trust. The trustees say SJP had previously referred them to a firm of solicitors to set up the H Trust. A suitability letter was sent on 3 August 2017 which identified that the trustees wanted to invest £336,000 to provide funds for the education of the beneficiaries.

SJP recommended that the H Trust invest £200,000 into an investment bond and £136,000 into a unit trust to generate an annual income of £36,000 required to cover expected education fees for the beneficiaries. The suitability report also recommended that the H Trust retain the first year's school fees on deposit and commence withdrawals from the second year.

The trustees took a withdrawal of £12,000 from the unit trust on 26 February 2018 to assist in paying for the educational fees. I understand this was the only withdrawal made and the trustees paid for all other educational fees by way of encashing other investments.

The trustees then encashed the investment bond using unit prices on 16 March 2021 for an amount of £222,346.35. An early withdrawal charge of £5,470.39 was applied, which resulted in a net payment of £216,875.96 being made. The unit trust was encashed using unit prices on 11 February 2021 for an amount of £136,721.53. No early withdrawal charge applied to the unit trust.

The trustees complained to SJP in March 2022 as they felt the advice was unsuitable. They said the investment growth wasn't sufficient to meet their objectives and they were restricted to a maximum of 5% withdrawal before incurring costs. They also felt the tax implications of the investments weren't fully explained and that they've been charged for ongoing advice they never received.

SJP considered the complaint and agreed that the advice was unsuitable. In summary, it said:

- Whilst it had no concerns about the level of risk or affordability of the investments, given the education fees were a known outlay, suitable advice would have been to retain the monies within the H Trust on deposit and draw them as and when they were required.
- Whilst this meant that growth would be limited, SJP said this would have ensured that funds would be available for the education of the beneficiaries.
- To put things right, it compared the return the H Trust actually received on its investments to a benchmark of the average rate for a one-year fixed rate bond. It said that having done so, there was no loss to compensate.
- It also offered £750 for the distress and inconvenience caused.

The trustees didn't accept SJP's findings and so they referred the complaint to this service for an independent review.

One of our investigator's considered the complaint and felt it should be upheld. In summary, they said:

- There's no evidence that SJP advised the trustees on setting up the H Trust, however, when making the investment recommendation, SJP couldn't ignore the trust and its aims.
- All the information which was given on the tax treatment of the investment indicates that the trustees or settlor would be liable for tax. While there was no explicit statement that says the trustees would need to file tax returns, the investigator felt the trustees ought to have been aware that if tax needed to be paid, it would need to be declared to HMRC via a tax return.
- The investment bond had substantial early withdrawal penalties for the first six years if withdrawals of more than 5% of the initial investment were made per year.
- SJP's initial advice fee (4.5%) and ongoing advice fee (0.5%) used up the full 5% allowance in the first year. And would've used up 0.5% in each year after that.
- The school fees were £36,000 per year, so to meet these expenses, the investments would've needed to withdraw more than 11% of the initial investment per year from the trust – with an expectation this would significantly increase once the beneficiaries started secondary school.
- They didn't agree that the H Trust shouldn't have been advised to invest at all.
- Overall, they felt the medium-risk portfolio of investments was broadly suitable for the trust's needs and aims. So, they didn't recommend a comparison with any benchmark.
- They didn't think the investment wrappers were suitable for the H Trust.
- As the trustees decided to surrender the investments and take advice from a different financial adviser, they said it wouldn't be fair for the H Trust to have to pay for advice twice. So, they said SJP should refund its initial advice fees.
- They hadn't seen any evidence that SJP provided ongoing advice so they felt these should be refunded.
- They also didn't think it was unreasonable for the H Trust to surrender the investments, given they weren't suitable for the purpose intended. And so they said the H Trust should also be refunded the early withdrawal charge on the bond.
- They felt the £750 for any distress and inconvenience caused was fair and reasonable.

SJP didn't accept the investigator's findings. It said that a more suitable approach for redressing the complaint would be to:

- Retain five years' worth of school fees in a deposit-based investment. Allowing the H Trust to withdraw £12,000 every four months to pay for school fees. This would have amounted to £180,000.
- Invest the remaining amount of £156,000 into an SJP Investment Bond in the same medium risk funds that were selected previously. With a view to accessing the funds after five years once the funds on deposit had been fully utilised. This would then help the H Trust achieve growth over the medium term in line with its attitude to risk.

The trustees didn't agree with the investigator's findings and also didn't accept SJP's suggested settlement above. They also felt that SJP should compensate it for all their additional tax liabilities resulting from its investment advice.

As no agreement could be reached, the complaint was passed to me to decide.

I issued a provisional decision on the matter in March 2024. I include a copy of this below.

What I've provisionally 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.

I hope the trustees don't take it as a discourtesy that I won't be responding to each submission or every point they have raised. The purpose of my decision isn't to do that, but rather to explain my findings on the key issues. Both parties agree that the initial investment advice was unsuitable for the trust's sole objective of providing sufficient funds to pay for the education of the beneficiaries. As such, my decision will focus solely on whether SJP's redress is fair and reasonable in all the circumstances.

When looking at the appropriate redress, I've applied a broad-brush approach as it's not my intention to try and fully recreate the advice that SJP should have given. Rather, I've looked carefully at the requirements of the trust in order to determine broadly what return, if any, the trust could have achieved if it had been given suitable advice.

Before I set out what I think SJP should do in order to compensate the trust for it giving unsuitable advice, I think it's important to note that I've not been provided with any evidence to support that SJP advised the trustees on setting up the trust. Also, I agree with the investigator that SJP provided sufficient information on the tax treatment of the investments to make the trustees aware that they or the settlor would be liable for tax. Whilst I've not been provided with any evidence to support that the trust has incurred any unnecessary tax liability as a result of the unsuitable advice, I will consider any information provided to me in response to this provisional decision before issuing my final decision. I will refer to this tax issue again when detailing what SJP needs to do to put things right as it will be clearer for the trust to understand whether the same tax liability would have been incurred.

As mentioned, the trust's sole investment objective was to provide sufficient funds to pay for the beneficiaries' education. This is confirmed in the suitability letter SJP sent to the trustees in August 2017. These costs were known from the outset and SJP ought to have considered these when providing its advice. The trustees have explained that the initial school fees for the first three years amounted to £36,000 per year. They've also explained that these costs then increased to £48,000 per year from year four and then to around £60,000 per year from year six onwards.

Looking at the total amount required to pay for beneficiaries' educational funds, it's clear that £336,000 wouldn't be sufficient to cover all future costs. So I think it was appropriate for SJP to recommend an investment that would achieve some capital growth. The suitability letter

also confirmed that the trust would not have any emergency funds, other than the funds for the first year's school fees. So whilst capital growth was important, SJP also needed to weigh up the need to have funds available to pay for school fees when they were required.

The suitability letter confirmed that the trust was looking to invest until the youngest beneficiary attained the age of eighteen years or, if later, the date on which the youngest beneficiary ceased to undergo full-time education. I understand the beneficiaries were seven and ten years old at the time and so the investment term did allow for the trust to invest for the medium to long term.

So I think on balance, it would be fair to have invested half of the available funds in an investment with no risk and half in an investment that carried some risk in order to achieve capital growth. I say this as having half the funds exposed to no risk would have allowed the trust access funds to pay for at least four years' worth of educational fees. This would also allow for the other half to be exposed to some risk in order to achieve some capital growth to pay for the subsequent educational fees.

I also understand the trustees have raised concerns regarding ongoing advice fees as well as having to incur costs associated with surrendering their investments and obtaining new advice. The trustees also think they should be refunded for the initial advice fee. I will address each of these points separately.

From the information provided, I'm not persuaded that SJP did provide the trust with ongoing advice despite it charging for this. It would appear that annual reviews were supposed to take place but as I've seen no evidence of these, I don't think it would be fair for SJP to charge the trust for a service it never received. As such, I will consider this in the redress section below.

I don't think the initial advice needs to be refunded as this was deducted from the investment value and, as such, will be considered as part of the calculation against the benchmark which I've included in the redress section below. Similarly, the early withdrawal charge that the trust incurred was also deducted from the surrender value and so this will also be considered as part of the redress calculation. To be clear, this is because the starting value of the investment will be £336,000 and the end value of the investment will be what was actually withdrawn, which included the withdrawal charges.

However, I am persuaded that the trustees have had to obtain alternative advice as a result of the unsuitable advice SJP gave them. As such, I think it would be fair for SJP to cover the costs associated with the new investment advice.

I don't think SJP was responsible for advising on the trust or setting it up, so I'm not persuaded any associated costs with either winding it up, or creating a new one, should be compensated by SJP.

I also understand the trust has incurred a tax liability which the trustees say they wouldn't have incurred had SJP given it suitable advice. Whilst I haven't seen evidence of the tax liability, I think it's likely the early withdrawal from the investment bond has created a chargeable event for which there will be tax to pay. I'm likely to say SJP is responsible to cover these costs as I don't think the advice to invest in the investment bond was suitable. I say this as it was clear that the trustees would need to make withdrawals from the investment bond in order to pay for the educational fees. These withdrawals were likely to be more than the 5% allowance and would therefore trigger a chargeable gain. It would appear that the trustees only made one withdrawal in February 2018 of £12,000 but it's possible that this alone triggered a chargeable gain for tax purposes.

In addition to this, I think it's most likely that the trust incurred a tax liability when encashing the investment bond in March 2021, and had SJP not suggested an investment bond in the first place the trust wouldn't have incurred this tax liability. So, I invite the trustees to provide evidence to support their increased tax liability as a result of SJP's unsuitable advice.

Finally, I also accept that the trustees have incurred some distress and inconvenience beyond that anticipated in their roles. I understand SJP has offered £750 in recognition of this and I find it to be fair and reasonable in all the circumstances.

Responses to my provisional decision

SJP didn't agree with my provisional findings. In summary, it said:

- It felt the H Trust should have retained more than 50% of the funds on deposit, as it would not recommend a client take such a large ad-hoc withdrawal from their investment within the first 5 years, to minimise the risk of eroding the capital and to offset the effects of any initial charges.
- It didn't agree with the benchmark calculation I recommended and instead suggested a more suitable approach would be to assume one of the SJP products was recommended and mirror the growth of that arrangement albeit with a different investment amount.
- It is reasonable to assume the H Trust would always have had some tax to pay regardless of what they were invested in and so suggested it would be fairer to consider the net overall gain after tax based on what happened versus what should have happened if suitable advice had been given.
- The offer being given via the benchmark index, effectively puts the H Trust in the position as if it had not incurred advice fees, so by refunding subsequent fees in 2021, it effectively puts the H Trust in the position as though they have not incurred any advice fees at all.

Mrs C, Mrs H, Mr H and Mr P as trustees of the H Trust agreed with my findings in part. In summary, they said:

- They strongly believed that SJP recommended they set up the trust.
- They provided evidence from an accountant to show the tax that they had paid.
- SJP didn't make it clear that the investments wouldn't cover all the future school fees.

As no agreement could be reached, the complaint was passed back to me to decide.

I issued a further provisional decision in August 2024 and include a copy below.

What I've provisionally 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 reviewed everything again, I'm still satisfied that it would be fair to have invested half of the available funds in an investment with no risk and half in an investment that carried some risk in order to achieve capital growth. However, I've changed my opinion on the redress for the tax liability and new advice fee which I will outline below.

In response to my provisional decision, Mrs C, Mrs H, Mr H and Mr P as trustees of the H Trust have provided an email from their accountant explaining what tax the trust incurred as a result of the advice to invest in the investment bond. The email explains that the net

amount the H Trust paid to HMRC as a result of the chargeable gain of £29,003 was £7,214.75. This was income tax taxed at 20%.

I've considered SJP's point regarding the tax liability, and I agree that it's likely the H Trust would have had to pay some tax liability had it not been invested in the investment bond. However, I think it's likely the H Trust would have had to pay capital gains tax on this rather than income tax. And as capital gains tax would likely have been charged at 10% (rather than 20% charged in income tax), I think it's fair and reasonable for SJP to pay the trust 50% of the tax liability incurred as a result of investing in the investment bond.

I've also thought carefully about the new advice fee the H Trust has incurred. On reflection, the benchmark comparison I used in my provisional findings accounted for the initial advice fee. As such, I don't think it would be fair for the H Trust to pay for any new advice as it would have always incurred such a fee had it been given suitable advice at the outset.

I appreciate Mrs C, Mrs H, Mr H and Mr P as trustees of the H Trust feel strongly that SJP provided advice on setting up the trust, however, I'm not persuaded the information provided amounts to providing trust set-up advice. Rather, it would appear that this advice was provided by a separate business.

Finally, SJP hasn't provided me with any evidence to show that the H Trust did receive annual reviews and so I'm still persuaded that it should refund any ongoing advice charges associated with any missed reviews. However, I have changed the redress calculation in order to incorporate the refund and any growth the fees amounts would have achieved had they not been charged.

Responses to my further provisional decision

SJP didn't accept my further provisional findings. In summary, it said:

- It believes that five years' worth of income should have been retained on deposit to fund school fees in the short term, which would've amounted to £204,000 of the available funds for investment.
- The remaining amount of £132,000 could have been invested for medium to long term growth, which could be accessed after the first five years.
- It recommended a unit trust with £136,000 of the £336,000 available within the Trust. It says this is only slightly higher than the £132,000 which it identified as being a suitable amount to invest for growth, if retaining five years' worth of income on deposit, plus any gain would be subject to CGT.
- By asking it to perform a comparison for the whole £336,000 invested by the Trust, and to consider a benchmark comparison instead of growth within the plan, the suggestion is that the unit trust is unsuitable.
- It didn't agree with me asking it to refund the ongoing advice fees before conducting a calculation for the unsuitable advice.

Mrs C, Mrs H, Mr H and Mr P as trustees of the H Trust acknowledged my findings and didn't provide any further comments for me to consider.

As SJP didn't accept my findings, the complaint has been passed back to me to decide.

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.

I appreciate that SJP says it would be fairer to conclude that the Trust ought to have retained five years' worth of income on deposit to fund school fees, which would've amounted to £204,000, rather than my suggestion of a 50/50 split. However, I believe the approach set out in my latest provisional decision is fair as I've taken a holistic view that the advice, as a whole, was unsuitable. And by taking our service's long-standing approach to redress where I can't be sure exactly how the trust would have invested had they been given suitable advice and knowing that the Trust was willing to take a small amount of risk with its investment, I'm satisfied the 50/50 approach I've taken is fair and reasonable in all the circumstances.

I acknowledge that the approach may not consider every detail of the potential investment decisions the Trust may have taken with SJP. But that's not the purpose of my decision. Instead, the approach I've taken provides a broad and reasonable approximation of the kind of return the Trust would have likely achieved had suitable advice been given. Whilst I've provided reasons as to why the investment bond was unsuitable, such as the Trust being unable to make large enough withdrawals from it to pay school fees, as well as the tax liabilities associated with it, I'm not saying the unit trust was suitable either. Rather, the approach puts the Trust in a position where it would likely make some returns, whilst being able to make withdrawals when needed. As such, I'm satisfied that the benchmark comparison provided in my provisional findings is fair and reasonable.

I've also considered SJP's comments on the tax liability and my approach to redressing this. I acknowledge that its suggestion to redress in line with the Trust investing £132,000 in a unit trust is only slightly higher than the £132,000 which it identified as being a suitable amount to invest for growth. However, as I've explained above, the approach I feel is fair is to compare the returns the Trust achieved with what it would have likely achieved had it invested half of the funds in an investment providing some growth and half in a low-risk investment. As I've explained above, the redress approach doesn't determine what exactly the Trust would have been invested in (such as an amount in a unit trust) but rather provides a comparison return the Trust would have likely achieved had it received suitable advice. As such, I'm satisfied that the redress in relation to the Trust's tax liability provided in my provisional findings is fair and reasonable and my stance on this remains unchanged.

I've still not been provided with any evidence to show that the Trust received annual reviews throughout the period of the investments. I've issued provisional decisions explaining why I intended to say SJP should refund the OACs charged and SJP hasn't provided any comments regarding this. As such, I'm satisfied SJP has had ample opportunity to provide evidence of OACs taking place as the trustees expected and so I will include the OACs in the putting things right section below.

Putting things right

To compensate the trustees fairly, SJP must:

- Calculate the difference between the *actual value* and *fair value* using the benchmark below:

Investment name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
The H Trust portfolio	Surrendered	For half the investment: FTSE WMA Stock Market	Date of investment	Date ceased to be held	8% simple per year on any loss from the end date to the

		Income Total Return Index; for the other half: average rate from fixed rate bonds			date of settlement
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Actual value

This means the actual amount paid 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, SJP should use the monthly average rate for the fixed rate bonds with 12 to 17 months maturity 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.

Any withdrawal, income or other payment out of the investment should be deducted from the fair value at the point it was actually paid so it ceases to accrue any return in the calculation from that point on.

If there are a large number of regular payments, to keep calculations simpler, I will accept if SJP totals all those payments and deducts that figure at the end instead of deducting periodically.

SJP should then:

- Calculate the OACs paid during the full period of the investments.
- If the *fair value* and OAC calculation together are greater than the *actual value*, then SJP must pay the difference plus 8% simple interest per year from the date of the investments to the date of settlement. I say this as even if the trustees had been suitably advised, they didn't receive the service they paid for and so they should also get a refund of the relevant OACs as well as the redress due from the unsuitable advice.
- If the *fair value* and the OAC calculation together are less than the *actual value*, then no refund is due.
- Regardless of the outcome of those calculations, SJP must, upon receipt of proof of payment, refund half the amount the trust had to pay in tax as a result of surrendering the investment bond. SJP should also pay 8% simple interest per year on that amount, from the date the trust paid the tax to the date of settlement.
- SJP should also provide a breakdown of the overall redress calculation in clear and simple to understand format.

Income tax may be payable on any interest awarded.

Why is this remedy suitable?

I have decided on this method of compensation because:

- The H Trust wanted to generate growth to help pay for later school fees, with some risk to capital, as well as safeguarding some funds to pay for more immediate school fees.
- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to their capital.
- The WMA index is a mix of diversified indices representing different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return.
- I consider that the H Trust's risk profile was in between, in the sense that it was prepared to take a small level of risk to attain its investment objectives. So, the 50/50 combination would reasonably put the H Trust into that position. It does not mean that H Trust would have invested 50% of its money in a fixed rate bond and 50% in some kind of index tracker fund. Rather, I consider this a reasonable compromise that broadly reflects the sort of return the H Trust could have obtained from investments suited to its objective and risk attitude.
- The additional interest is for being deprived of the use of any compensation money since the end date.

My final decision

My final decision is that SJP should pay the trustees of the H Trust the redress as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C, Mrs H, Mr H and Mr P as trustees of the H Trust to accept or reject my decision before 15 January 2025.

Ben Waites
Ombudsman