

The complaint

The trustees and executors of 'The P Trust' have complained about the advice received from St James's Place Wealth Management Plc ('SJPWM'). They say SJPWM didn't meet the family's requirements as Passive Foreign Investment Company ('PFIC') tax had been incurred on undistributed income and gains from an International Loan Bond ('ILB').

The trustees are represented in bringing the complaint by 'Mr P1'.

What happened

In 2001 Mr P2 was advised by SJPWM to invest £150,000 in an ILB within a Loan Trust. The beneficiaries were his wife (Mrs P3), Mr P1 and Mr P4. Mr P2, Mr P1, Mrs P3 and Mr P4 were all trustees of the trust. Mr P2, Mr P1 and Mr P4 have held power of attorney for Mrs P3 since December 2019. Mr P2 died in October 2021 and Mr P1 is the executor of Mr P2's estate along with Mr P4.

Mr P2 was a UK citizen but jointly held some property in the US with Mrs P3 who was a US citizen for tax purposes. After the death of Mr P2, Mr P1 had to complete joint tax returns for the late Mr P2 and Mrs P3. The tax returns showed they had received joint rental from their US properties as well as US\$17,529 in PFIC taxes.

Mr P1 complained about this to SJPWM in November 2023 as he said the taxes were due because of its advice.

SJPWM responded in its letter of 6 March 2004. It didn't uphold the complaint and said;

- The US had passed the Foreign Account Tax Compliance Act ('FATCA') in 2010 and it was introduced in July 2014. The late Mr P had been advised of this in May 2019, SJPWM couldn't give advice about that and advised that advice be taken in the US.
- The late Mr P was a UK citizen and the advice to establish the Loan Trust was suitable. When the plan was established additional US reporting wasn't required.
- The Loan Trust was established by the late Mr P2 prior to FATCA in 2010 and there were no further investments relevant to PFIC since the regulations took effect on 1 July 2014. So, it wasn't willing to reimburse US tax paid.
- It offered £250 for the delay in responding to the complaint.

Unhappy with the outcome, the trustees brought their complaint to the Financial Ombudsman Service. SJPWM thought the complaint had been made too late under the rules that apply. One of my fellow ombudsmen decided it was a complaint we could look into.

Our investigator who considered the merits of the complaint didn't think SJPWM needed to do anything more. She said;

- She could only consider whether SJPWM had acted correctly at the time the advice was given.

- SJPWM was only responsible for the advice given to Mr P2 and though it was aware of the tax complications for Mrs P3 and her US citizenship, it never gave her advice.
- Taxes were only payable due to Mrs P3's status as a beneficiary of the trust. PFIC taxes hadn't come about due to Mr P2 being a trustee. SJPWM only advised Mr P2 so it couldn't be held responsible for advice it did or didn't give to Mrs P3 and whether she should to have been a beneficiary.
- The FATCA didn't come into force until years after the advice was given in 2001 so SJPWM wasn't responsible for events that happened after the date of the advice, but she considered whether SJPWM should have advised Mr P2 to amend his investments further to FATCA's introduction in 2014.
- However, the PFIC taxes only affected beneficiaries of the Trust and Mr P2 wasn't a beneficiary so from his perspective, no changes needed to be made.
- SJPWM wrote to Mr P2 in 2019 and relied on the fact it was unable to advise Mrs P3 and it told Mr P2 he 'must' take advice from the US authorities about the impact of the proposals.

Mr P2 didn't agree with the investigator. He said;

- SJPWM met with the family every year and would have known Mrs P3 was American and that she was listed as a beneficiary of the ILB. SJPWM had a responsibility to raise the alarm that the product wasn't suitable.
- SJPWM had a responsibility to make sure the product remained suitable and the fact it said it couldn't advise Mrs P3 personally demonstrated its knowledge that the product wasn't suitable for a US citizen. It should have flagged to Mr P2 – as its client – that Mrs P3 or any other American beneficiary should be removed as a beneficiary.

Our investigator responded to say it was already accepted SJPWM didn't advise any other family member than Mr P2 in a personal capacity.

As the complaint remains unresolved, it has been passed to me for decision in my role as ombudsman.

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 conclusions as the investigator and broadly for the same reasons. I'll explain why.

I should first say I haven't seen any evidence to suggest that the advice given in 2001 to set up the trust was wrong. And in any event, I can't consider that advice with the benefit of hindsight with regard to any PFIC tax incurred as it was the US Internal Revenue Service ('IRS') that passed the FATCA in 2010 and introduced it in 2014. So, this was after the event of the original advice.

SJPWM has said that its Partners were made aware of the risk posed by advising investments to US citizens after the Act was introduced. And I note in an internal note from SJPWM's adviser that Mr P2's adviser at SJPWM declined to provide investment advice for Mrs P3 because of her US citizenship as he 'was not allowed to'.

But I've gone onto consider whether SJPWM made Mr P2 sufficiently aware of the introduction of the Act so that he could act if he wished to, while bearing in mind he was a

UK citizen so wouldn't be impacted by its introduction. And I've also borne in mind that it was Mr P2 only who was a client of SJPWM, so it wasn't responsible for providing advice about the tax implications for Mrs P3 upon the introduction of the Act.

I can see that SJPWM wrote to Mr P2 on 20 May 2019 about all of his investments. With reference to the ILB I note it says with regard to adding Mr P1 as trustee the necessary documents weren't to be submitted 'just yet until you have taken advice in the US as to the following...' and the details of the questions posed were given. This was followed by;

'IMPORTANT : As I understand it, the US authorities need to know about all overseas income from Investments. At the point that any income from the bond growth (a chargeable event) is appointed to [...] and they take it, they must divulge this to the US authorities. We cannot give you advice as to what they would do and how you would be taxed, and you must take advice in the US on the matter before taking any future income.

...

Again, I have pointed out some pit-falls but you must take advice from a solicitor/UK lawyer before doing this.

In summary, it seems to me that US citizens must declare ALL overseas investments and bank accounts to the US authorities. It then depends on whether or not growth has been withdrawn or an income taken. You should seek advice on this from the authorities... [Original emphasis]

Mr P1 says that SJPWM had an obligation to provide ongoing advice particularly in light of the at least annual family meetings. But I think the above shows Mr P2 was sufficiently warned and was aware about the potential complications and tax implications about investments for a US citizen and that he needed to seek advice specialist advice because of that.

It's clear that SJPWM's relationship was with Mr P2 and not Mrs P3. As referred to above SJPWM didn't want to engage with Mrs P3 as a client because of her US citizenship as SJPWM didn't want its advisers to provide advice to such clients. So, I don't think that SJPWM presented itself as having either the knowledge or the capacity to take on US citizens as clients or be able to provide advice considering the citizenship status. In fact, quite the contrary.

As SJPWM had provided advice to Mr P2 only, I can't agree it can be held responsible for the tax implications of the Trust for Mrs P3 as a beneficiary. It didn't have any responsibility to ensure the fact that Mrs P3 was a beneficiary of the ILB was suitable for her circumstances. It only had to assess the ILB's suitability for Mr P2 and his objectives. It had made clear it didn't want to advise Mrs P3 because of her US citizenship and Mr P2, being SJPWM's client, was in my opinion made sufficiently aware that US citizenship status would need specialist advice. It was Mr P2's choice not to do that so I can't agree SJPWM is responsible here.

Overall, I'm satisfied that Mr P2 was made sufficiently aware that he would need to take specialist advice for US citizen tax. It's not clear why he didn't, and it seems likely to me the complaint has arisen because of that. But I can't hold SJPWM responsible for Mr P2's decision not to take such specialist advice after he was warned by SJPWM that it was necessary for him to do so.

It seems likely Mrs P3's citizenship has given rise to additional taxes that wouldn't otherwise have been incurred if that specialist advice had been taken when Mr P1 was advised to do so.

Taking all the above into account, I don't uphold the trustees'/executor's complaint. I appreciate they will be disappointed in the outcome – it's clear they feel strongly about it – but I hope I have been able to explain how and why I have reached that decision.

It is for the trustees/executors to decide whether they wish to accept SJPWM's offer of £250 for the delay in it responding to the complaint.

My final decision

For the reasons given, I don't uphold the complaint about St James's Place Wealth Management Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P, Mrs P, and the estate of Mr P as trustees of the P Trust to accept or reject my decision before 23 April 2025.

Catherine Langley
Ombudsman