

The complaint

X and X have complained about advice they received from St James's Place Wealth Management Plc ('SJPWM') to take out two Gift Plans. They say they were given misleading information about the growth which had been poor, they weren't told it was for a fixed term and communication had been poor. They would like to be compensated for the penalty charged upon encashment, the tax payable and the huge amount of stress they have been caused.

What happened

In 2016, X and X sought advice about inheritance tax planning. They were advised to invest £100,000 each into Gift Plans in a Discretionary Trust. A further £75,000 was added to the Gift Plan in August 2018.

X and X responded to a SJPWM survey and expressed their dissatisfaction which SJPWM treated as a complaint. But there was a delay in SPWM responding so X and X brought their complaint to the Financial Ombudsman Service.

In the meantime, SJPWM issued its final response to the complaint on 24 October 2024. It said;

- It detailed the charges that were illustrated to X and X.
- X and X were made aware that there were risks associated with investing.
- It outlined the timings of the early encashment/assignment instruction and concluded SJPWM had acted in a timely manner.
- X and X had invested for a term of five to 15 years. The Investment Bonds didn't have a maturity date, but X and X had to invest for a minimum of seven years for the investment to be outside of their estate.
- X and X had been advised to take independent tax advice.
- Performance couldn't be guaranteed, and the investments hadn't made any losses.

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

- The advice was to invest for IHT purposes and X and X had no requirement for the capital or income. So, she didn't think the advice was unsuitable. The investment wasn't guaranteed and the costs were incurred as part of the advice.
- She was satisfied that X and X had reasonable awareness the surrender returns weren't guaranteed.
- Upon surrender, the additional investment of £75,000 was subject to an early withdrawal charge which should have been highlighted to X and X, but she thought they would have proceeded with the encashment as they weren't happy with the investment.
- X and X received annual reviews in 2022 and 2023. And there was sufficient

communication around their encashment and subsequent queries.

X and X didn't agree. They said;

- They acknowledged SJPWM's letter dated 9 September 2023 referenced their intention to encash, but the early withdrawal charges associated with the additional £75,000 investment made in August 2018 were not explicitly highlighted to them and the omission prevented them from making a fully informed decision about encashment.
- They had to pay a penalty on early encashment and lost money. They would have delayed the encashment if they had known about the maturity date.
- SJPWM's service had been substandard, and their adviser didn't proactively address their concerns about the performance of the investment. Their questions about the transfer of the Gift Plan Investment Bonds weren't responded to.
- Their decision to encash was based on incomplete information and the penalty incurred was because of SJPWM's failure to disclose the charges. They wouldn't have accepted such a reduction upon encashment if they had been properly advised.
- Given SJPWM's lack of transparency and failure to communicate about the early withdrawal charges it should bear responsibility for the financial loss incurred.
- They were naïve investors and trusted SJPWM.
- X and X had been given information at meetings about how the investment would grow but which wasn't given to them in writing. They hadn't been happy with the investments, but this wasn't reflected in the review letters.
- When comparing the growth of other companies' investments SJPWM wasn't on par. It was more concerned about charging fees and making profits.
- They were initially told about the fees but were equally assured about considerable profits.
- SJPWM hadn't communicated and particularly about the encashment/assignment and subsequent queries. They had only been told they needed to keep their investments for seven years for IHT purposes. They had to call many times but because their adviser wouldn't speak with them, they had to resort to SJPWM's 'clientcare' email.

As the complaint remains unresolved, it has been passed to me for a 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.

X and X have also raised a complaint about the advice they and their fellow trustees received about taking a Loan Plan in Trust. This decision relates solely to the X and X's complaint about the Gift Plans, but some correspondence referred to relates to both complaints.

X and X's circumstances

X and X had four meetings with SJPWM between July and October 2016 and a Confidential Financial Review was completed by the adviser to assess X and X circumstances.

X and X were both employed but were looking to retire the following year. They had two independent children, and their main residence was up for sale as they intended on moving nearer to their children the following year where they had a second property. They didn't disclose their employment income, only their pension income, as their employment income when the house was sold would stop. Their pensions provided a joint net monthly disposable income of £1,800.

X and X's assets included their main residence which was valued at £850,000 and second residence at £520,000. They held cash of over £548,000, cash ISAs of over £22,000, shares of £1,495, equity ISAs valued at £31,700 and two investment bonds valued at just under £63,000. They had also previously established Whole of Life plans for sums assured of £100,000 and one joint life for a sum assured of £127,000.

X and X's investment objectives and attitude to risk

X and X's priorities were recorded as being to reduce their IHT liability and were looking to gift £100,000 each into Gift Plans using Discretionary Trusts. They didn't 'need income or access to the fund now or in the future, as they have adequate income and cash.' Their two children were to be default beneficiaries of the Trusts.

The Confidential Financial Review recorded that X and X's attitude to risk was low to medium and they were looking for the potential of capital growth. This was further recorded in the suitability letter of 29 September 2016 and that a 'conversation' had taken place with their adviser about risk along with key factors such as their objectives, investment experience, term of the investment and ability to withstand losses.

It was agreed that X and X were both 'Lower-Medium Risk' investors which meant they were cautious investors but wanted the value of their capital to keep pace with inflation.

X and X were seeking advice because they didn't have the knowledge or experience to make such an investment decision unaided. So, SJPWM needs to demonstrate that it gave suitable advice taking into account X and X's circumstances, understanding and knowledge after ascertaining their attitude to risk.

While clearly, I can't know what happened at the meeting, I think it's likely that risk was discussed with X and X. I say this because X and X were given SJPWM's 'Understanding the balance between risk and reward' document and the suitability letter drew their attention to risk factors that applied to the funds that had been recommended. This and the fact that it's recorded that a 'conversation' was had about the risk persuades me that I think this was most likely discussed and agreed. And looking at X and X's circumstances and investment objectives at the time, I don't find that a 'Lower-Medium' attitude to risk to be unreasonable.

The advice and was it suitable

X and X were advised to invest £100,000 each into a St James's Place Gift Plan. This was to reduce their inheritance tax liability by gifting £200,000 to their children in a tax efficient manner for potential medium-term growth. Gifting into a Gift Plan would mean the gifted amount would fall outside of X and X's estates provided they survived for a further even years. And any growth on the investment was outside of their estates from the point of investment.

The suitability letter outlined the portfolio of funds selected which were;

Alternative Assets Fund (10%)
Corporate Bond Fund (5%)
Diversified Bond Fund (5%)
Global Equity Fund (15%)
Index Linked Gilts Fund (10%)
International Corporate Bond Fund (10%)
International Equity Fund (5%)
Investment Grade Corporate Bond Fund (10%)
Multi Asset Fund (15%)
UK Absolute Return Fund (10%)
Worldwide Managed Fund (5%)

The portfolio selection was recommended because its aim was to provide steady returns and was suitable for investment over the medium term of at least five years.

In reaching a fair outcome to the complaint I have to consider whether the advice X and X were given was suitable for them at the time, as identified prior to the investment and whether this was sufficiently explained to them. Looking at the selected funds, I haven't seen anything to suggest they exposed X and X to a level of risk in excess of low to medium, which as I've already concluded, I don't think was an unreasonable level of risk to take considering their circumstances and investment objectives. So, I don't find the underlying funds to be unsuitable.

And information recorded about X and X's financial circumstances show they had sufficient income and capital from other sources to meet their daily requirements and for emergencies, so I'm satisfied the investment into the Gift Plans was affordable for them.

Taking all the above into consideration, I don't find that the advice given to X and X was unsuitable being in mind their personal and financial circumstance, their attitude to risk and investment requirements. It allowed for IHT planning and for the amount gifted to be potentially exempt from IHT upon their deaths. And any growth in the underlying investments would fall outside of the estate. I'm satisfied the investments were in line with their attitude to risk.

It follows I don't uphold this element of the complaint.

Information given about the investment

On 9 September 2023 their adviser wrote to X and X. He referred to conversations held on 5 and 6 October so I think it more likely the letter should have been dated 9 October 2023 because of the information it contained and X and X's subsequent actions.

That letter referred to X and X not being pleased with the performance of the investment due to little growth and that;

'You have indicated to me that you wish to bring both the Gift Trusts set up in 2016 to an end by assigning the full values of these Investment Bonds to your [children] who are both Trustees and the two nominated beneficiaries equally. It is then your [children's] intention to encash these Investment Bonds so the money can be used to help them with their mortgages which have increased significantly over the last year or so.'

The adviser enclosed the assignment paperwork and once the assignment was completed to X and X's children, he said he would contact them directly. He went on to say;

'If on receipt they want to start to encash all or part of the Bond, I would recommend they seek independent tax advice before doing so.'

And in the adviser's email of 16 November 2023, he said;

'I am happy to provide the paperwork to withdraw these funds and would recommend that you refer to our original paperwork and also take independent tax advice before returning the paperwork so you are aware of any potential tax implications...'

I can't see there was any reference to the investment being for a fixed term. This is relevant here as X and X invested an additional £75,000 in August 2018 and they question the application of an early withdrawal charge potentially being applied to that element. But the Investment Bonds themselves don't have a maturity date and the funds were placed in Gift Plans in order to gift them to X and X's children.

The agreed investment term was for the medium to longer term of between five and 15 years as X and X wished to accumulate growth. But with regard to any future potential encashment the illustration of 28 September 2016 said;

'When you invest with us you pay us charges for our advice and charges for the products we recommend. Details of these charges are set out below. The total of these charges is equivalent to an Annual Management Charge of 1.5% each year coupled with an early withdrawal charge of 6% in the first year reducing to nil after 6 years for each contribution you make.'

And the illustration for the additional investment of £75,000 in 2018 said;

'There will be an initial product charge of 1.5% of your investment. There will also be an annual product management charge of 1% but this will be waived in the first six years for each investment. If you withdraw money from one or more identical contracts within your bond within the first six years of an investment there will be a product early withdrawal charge of 1% of the value of your fund in respect of this investment.'

Because of this I am satisfied X and X were reasonably made aware that if they were to encash the Investment Bonds before six years a charge would be applied. X and X say to date they don't know if there are any penalties for releasing the funds. But the adviser had already provided this information when giving the advice and so there was no reason to think they weren't aware of the early withdrawal charge.

So, while I appreciate X and X's opinion that they should have been advised of this, it was flagged to X and X that they should revisit the initial advice letter which outlined that an early withdrawal charge would apply within the first six years.

X and X say they would have waited to encash the investment, but I've borne in mind they were surrendering the investment as they didn't want to have any of their money with SJPWM anymore. They said this was because of the fees and the poor investment return. So, despite what X and X now say, I don't have any compelling evidence that X and X, or their children, would have continued to hold the bond if they had been aware of the early withdrawal charge as they had already stated they just wanted to withdraw from SJPWM. It follows that I don't agree with X and X that they weren't given sufficient information to make a fully informed investment decision when encashing the Investment Bonds and I'm not persuaded they would have done anything different.

The performance

X and X have said they were shown documents at meetings suggesting the investments would perform but weren't given to them in writing. Clearly, I can't know what X and X were shown over and above what has been presented to me. But I note that the Key Facts documents for the Gift Plans gave some estimates of future potential growth of the investments. It also included the following;

'The Financial Conduct Authority (FCA) sets maximum growth rates that can be used in projections; these are 1.5%, 4.5% and 7.5% each year for the Lower, Mid and Higher rates respectively. All firms use these except where they believe a lower rate will give a more realistic indication of potential future returns. Of the funds you have selected, those where we use lower growth rate assumptions are...'

So SJPWM did provide growth projections as allowed by the regulator, but I haven't seen anything to suggest there was a guarantee of investment growth and the Key Facts explained that how much the investor would get back would depend on how the investments grew. The Key Facts document also provided the 'WARNING – If you cash in during the early years you could get back less than you paid in.'

When the Investment Bonds were transferred to X and X's children in January 2024, the values were £107,951.13 and £181,808.26. X and X are disappointed with the return and have complained about the lack of growth of their investment. While I can't consider performance in and of itself, I can consider whether the portfolio was unsuitable for X and X or whether it's been mismanaged.

Provided a portfolio is invested in line with its overall objectives and disclosed risk – in this case for steady returns over the term of at least five years by investing in a broad range of assets – collective investments, within the agreed risk profile, then it wouldn't be fair or reasonable for me to uphold the complaint on this point. I haven't seen anything to suggest that the portfolio was invested outside of its stated investment objectives or risk profile.

And the fact that the risk of underperformance of the portfolios materialised against the benchmarks, does not automatically mean that the SJPWM or the investment managers did anything wrong. In the absence of any evidence that investment manager mismanaged the portfolios – and the performance of the portfolios alone doesn't evidence this – I am unable to say that SJPWM or the investment managers have done anything wrong in the overall management of X and X's investments.

While I can understand why X and X may not be happy with the performance of the portfolio during the period in question, but the issue of portfolio performance is not straightforward in that it is actively managed. This means the money is invested in specific assets of funds chosen by the fund's investment manager. If the portfolio in a certain period poorly performed that's because the investment manager had taken certain decisions that hadn't paid off – at least in the period under review. That's disappointing, of course, but reflects the investment manager exercising their judgment – which they are supposed to do. It doesn't mean SJPWM, or the investment manager had been negligent or failed in their duty of care.

The charges

The illustration provided at the time the advice in 2018 was given had a section entitled 'What are the charges?' said;

- 'When you invest with us you pay us charges for our advice and charges for the products we recommend. Details of these charges are set out below.'

- We charge for our initial advice and for our ongoing advice. 4.5% of your initial investment will be used to pay for initial advice and an annual charge of 0.5% will be charged for the ongoing advice and the relationship with your adviser.
- There will be an initial product charge of 1.5% of your investment. There will also be an annual product management charge of 1% but this will be waived in the first six years for each investment. If you withdraw money from one or more identical contracts within your bond within the first six years of an investment there will be a product early withdrawal charge of 1% of the value of your fund in respect of this investment.
- Details were also given on the charges for the management and maintenance of the underlying investments.'

There was a further section entitled 'How much will the advice cost?'. The cost of the initial advice of 4.5% was detailed as being £3,375 for the 2018 addition of £75,000. Taking the information provided in the illustration into account, I don't think it would be fair to say that X and X weren't made aware of the charges in advance of them accepting the investment advice.

The communication

X and X say that SJPWM didn't communicate with them and particularly after encashment. While the information I have post encashment is limited, I note that leading up to the encashment the adviser did engage with X and X;

- 09.10.23 – (the letter I think was mis-dated as 9 September 2023) The adviser wrote to X and X further to a review and enclosed the assignment paperwork.
- 10.10.23 – X and X wrote to SJPWM thanking their adviser for the paperwork and confirming their two children had moved and gave the new addresses.
10.10.23 – The adviser responded to say they should replace the old addresses with the new addresses and sign the alterations.
- 31.10.23 – X and X apologised for the delays, but as they had been away on holiday. They asked some questions about the paperwork.
- 01.11.23 – The adviser confirmed that the funds couldn't be transferred direct to their children's bank account, the bonds needed to be transferred out of trust and into their children's name before they were encashed. It was strongly recommended they seek tax advice.
- 16.11.23 – X and X wrote to their adviser as they wanted to withdraw all funds held with SJPWM. They asked questions about the encashment and didn't want to proceed until those questions were answered.
- 16.11.23 – The adviser responded to say that he would provide the paperwork but recommended they review the original paperwork and take independent tax advice, so they were aware of any potential tax implications. He provided the withdrawal forms.

There's nothing pre-withdrawal/assignment to show X and X were not responded to in a timely manner. It's not clear to me when X and X provided all the assignment/withdrawal documents and understand X and X had to chase SJPWM many times for the surrender proceeds which were received in January 2024. While I appreciate X and X's frustration, but reassignment and/or surrender can take some time.

X and X have referred to not being asked about what type of investment they wanted upon transfer which I assume means the reassignment to their children. They say didn't want another bond with SJPWM. If the Investment Bonds in the Gift Plans have been transferred to X and X's children as far as I am aware they would have been transferred intact and holding the original investments. If X and X, or their children want to know more about this and potentially investing in different underlying investments either within the Investment Bond wrapper or outside of it, they would need to speak with SJPWM.

Taking all the above into account and because of the information presented to me, I don't uphold X and X's complaint. I appreciate they will be disappointed in the outcome. It's clear they understandably feel strongly about it, and I'd like to thank them for the effort and time spent in bringing their complaint. But I hope I have been able to explain how and why I have reached my decision.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask X and X to accept or reject my decision before 8 August 2025.

Catherine Langley
Ombudsman