DRN-5355547

The complaint

The trustees of a Loan Plan Trust have complained about advice they received from St James's Place Wealth Management Plc ('SJPWM'). They say they were given misleading information about the growth within the Loan Plan which had been poor, they had to pay tax on the chargeable gain, 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.

The trustees are represented by X and X in bringing their complaint.

What happened

In 2018, upon the advice of SJPWM, X and X invested £200,000 into a Loan Plan to reduce their inheritance tax ('IHT') liability. X and X encashed the investment at the end of 2023 as they weren't happy with the charges or the performance of the investments.

X and X then responded to a SJPWM survey and expressed their dissatisfaction which SJPWM treated as a complaint. There was a delay in SJPWM 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 timing of the early encashment 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;

- She didn't think the advice to take out a Loan Plan was unsuitable as it met X and X's needs to mitigate IHT and retain access to their capital. The investments made were in line with their attitude to risk. There was no evidence they had been advised of a guaranteed return and the costs were explained to them.
- She was satisfied that X and X had reasonable awareness the surrender returns weren't guaranteed.
- Taking account of initial costs, a gain of over £14,000 had been made. The investigator couldn't see that tax was payable. X and X had been advised to seek tax advice and that an early withdrawal charge would apply if not held for six years. She

thought X and X 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 had they been made aware of the charges, they would have carefully reconsidered their options, as the financial impact of the early withdrawal charges significantly affected the value of the encashment.
- The investigator hadn't addressed their concerns that they weren't informed about the maturity in May 2024. 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 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. They tried to contact SJPWM 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.

<u>X and X's circumstances</u>

X and X were the settlors of the Loan Plan. At the time of the advice, they were both retired and had a joint net monthly disposable income of £2,300 from their pensions.

Their assets included their home which was valued at £575,000. They had cash of over £1.2m, cash ISAs of over £20,000, shares of £1,500, equity ISAs valued at £25,000, two investment bonds valued at over £62,000 and two Gift Plan SJPWM investments bonds valued at £206,000. They had also previously set up two Gift Plans held in Discretionary Trusts for the benefit of their two children.

<u>X and X's investment objectives and attitude to risk</u>

X and X had recently sold their main residence and had moved to their second property to be nearer to their children and were now fully retired. The suitability letter of 10 May 2018 records that at the time X and X had £200,000 from the sale proceeds of their house which they wanted to invest for IHT planning but to retain access to the capital at the same time. They also wanted to gift money to their two children to help them with buying a property.

The May 2018 suitability letter records that X and X had had a 'conversation' with their adviser about risk along with key factors such as their objectives, investment experience, term of the investment and ability to withstand losses.

With regard to X and X's investment experience the suitability letter recorded that;

> 'Your history of previous investment decisions demonstrates some investment experience. This is demonstrated by a history of investing in equities and other assets through your existing investment bonds and stocks and shares ISAs.'

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 its recorded 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 discussion was had about the risk persuades me that 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.

<u>The advice and was it suitable</u>

X and X were advised to invest £200,000 in a Loan Plan in a Trust rather than gifting the money or other options such as investments attracting Business Property Relief benefits or Discounted Gift Plan. X and X would still have access to the capital, but any growth would be outside of their estate for IHT purposes. The suitability letter suggests that alternatives were considered but that the Loan Plan was the most suitable to meet their needs for IHT planning and retaining access to their capital.

The suitability letter explained that the Loan Plan would be invested into and Investment Bond 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. And X and X had some previous experience of the portfolio as they were also invested in the same in their existing Gift Plans established in 2016. An additional £75,000 was added to the Gift Plans in 2018 which is addressed in a separate complaint.

My role is 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 'Lower-Medium'. So, I don't find the underlying funds to be unsuitable.

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 while retaining access to the capital which was their investment objective. And any growth in the underlying investments would fall outside of the estate. I'm satisfied the underlying investments were in line with their attitude to risk.

And X and X had sufficient income and capital from other sources to meet their requirements as well as sufficient other financial assets and cash to rely upon, so I don't have any concerns about the affordability of the investment.

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

<u>Information given about the investment</u>

I can't see there was any reference to the investment being for a fixed term. 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 the Investment Bonds themselves didn't have a maturity date and with regard to the potential encashment the suitability letter of 10 May 2018 said;

> 'If withdrawals of more than 5% are made, or the Bond is surrendered or individual clusters are encashed, this will trigger a Chargeable Event which may incur an Income Tax liability.'

And the Illustration of 10 May 2018 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.'

Because of this I am satisfied X and X were reasonably made aware that if they were to encash the bond before six years a charge would be applied. X and X say their adviser should have advised them of this when they requested encashment. 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 surrender charge. And in any event, I note that 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…'

So, while I appreciate X and X's opinion that they should have been advised of this at the point of encashment, and this no doubt would have been helpful, it was flagged to X and X they should revisit the initial advice letter which outlined that an early surrender 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 capital 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 they would have continued to hold the bond if they had been aware of the early surrender 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 bond and I'm not sufficiently persuaded they would have done anything different.

<u>The performance</u>

X and X have said they were shown documents at meetings suggesting the investment 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 document for the Loan Plan 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 then you paid in.' It provided a table showing the effect of deductions which it explained included charges – but not for the cost of the advice – any surrender penalties and other adjustments.

The amount invested – after the initial charge – was £191,000 and encashment proceeds were £200,250.58. X and X are disappointed with the return, however while I can't consider performance in and itself, but 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 portfolio materialised against the benchmarks, does not automatically mean that SJPWM did anything wrong. In the absence of any evidence that SJPWM or the 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 manager has 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 and chargeable gain

The illustration provided at the time the advice was given had a section entitled 'What are the charges?' which 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. Thet 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.
- The charges for our advice are 4.5% of the amount you invest and an annual charge of 0.5% a year. The charges for the product are 1.5% of the amount you invest and an annual charge of 1% a year which will in effect be waived for each of the first six years after your investment. If you withdraw all of the money from one or more identical contracts within your bond in the first six years after making a contribution an early withdrawal charge of 1% will apply to the funds accumulated from that contribution.'

Details were also given on the charges for the management and maintenance of the underlying collective investments.

There was a further section entitled 'How much will the advice cost?' and the cost of the initial advice of 4.5% was detailed as being £9,000. Taking the information provided in the illustration into account, which I am persuaded X and X saw, 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 investment was fully surrendered on 5 December 2023. SJPWM provided a Certificate of Chargeable Event showing the amount of gain arising as being £14,262.00 and the 'Amount of basic rate income tax treated as paid…' being £2,853.00. That tax was treated as paid at a basic rate of income tax of 20%. That gain had to be reported to HMRC which would be split between the owners X and X.

However, the Confidential Financial Review document confirmed that X and X were basic rate taxpayers. So, as far as I can ascertain, they wouldn't be liable for any further tax, but they should seek tax advice if they have further questions around this.

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 the encashment the adviser did engage with X and X;

- 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 just replace the old with the new addresses and sign the alterations.

- 31.10.23 – X and X contacted their adviser and apologise for the delay 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 – for the Gift Plans – 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 X and X 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-encashment 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. And while its disappointing to hear X and X had to chase SJPWM for the surrender proceeds to be paid out to them, I haven't seen sufficient evidence that overall, X and X weren't communicated with.

Taking all the above into account and because of the information presented to me, I don't uphold the trustee's complaint. I appreciate they will be disappointed with 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 the trustee's complaint about St James's Place Wealth Management Plc.

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

Catherine Langley
Ombudsman