

The complaint

Mr and Mrs O's complaint concerns advice received from St. James's Place Wealth Management Plc ("SJP") in late 2017 to make an additional investment into their existing SJP investment bond, which had been started in 2008.

They feel this advice was unsuitable as the money (just over £1million) used to make the additional investment was moved from a unit trust investment held with another provider and the bond wasn't as tax efficient as the unit trust investment, primarily because of the treatment of withdrawals. They also feel that the adviser failed to disclose that they would be charged an initial fee for the provision of the 2017 advice, plus ongoing fees.

What happened

The background to the complaint will be well known to both parties, so I won't go into detail here.

In short, the investigator considered Mr and Mrs O's concerns and concluded that the advice to transfer money to the bond hadn't been suitable. His main reasons for making this finding were –

- The suitability report issued to Mr and Mrs O explained that the underlying funds were taxed at 20%, which satisfied liability to capital gains and income tax at the basic rate. The report also confirmed Mr and Mrs O could withdraw up to 5% of the original investment without incurring immediate personal liability to income tax. The appendix added that withdrawals from the bond were subject to early withdrawal fees of 6% in the first year, reducing by each year 1% thereafter.
- Although the report covered the tax treatment of the bond in isolation, it didn't explain the adviser's rationale for advising Mr and Mrs O to move from what was already a tax efficient investment wrapper. It was relevant to note that capital gains tax in respect of unit trusts was capped at 20% even for higher rate taxpayers and that, with bonds, tax exceeding the basic rate was payable when chargeable events were triggered due to annual withdrawal allowances being exceeded.
- There was disagreement regarding Mr and Mrs O's objectives at the time, but in bringing the complaint they'd said they had been broadly happy with their existing arrangements.
- The objectives noted in the report indicated that Mr and Mrs O simply wanted to save for the future in a tax efficient manner and take withdrawals later, when they were lower rate taxpayers. They had no specific objectives for the proceeds.
- However, several large withdrawals had been made from the unit trust investment earlier during 2017, totalling over £400,000, so considerably more than 5% of the original contribution of £1.2million.
- The 'existing arrangements' table in the report showed that following the transfer Mr and Mrs O weren't left with a great deal of readily available cash. Certainly not that would've been able to match the cash flow of earlier in 2017.
- This issue was highlighted in 2019 when Mr and Mrs O had to withdraw money from the bond and their ISAs.
- As such, Mr and Mrs O would've been better off remaining invested in the unit trust.

They would've continued to pay 20% capital gains tax on their regular withdrawals and wouldn't have had to pay any early withdrawal charges. And they would've remained invested in a portfolio which matched their attitude to risk.

The investigator noted that, despite his view that the advice had been unsuitable, he didn't think Mr and Mrs O had been misinformed about the charges relating to the advice, which he felt had been clearly set out in the documentation.

In respect of compensation, the investigator recommended that SJP should compare the value of Mr and Mrs O's bond (in respect of the contribution resulting from the 2017 advice) on the dates it was surrendered with the amount they would've held on those dates had they remained invested in the unit trust. If the second of these values was higher, SJP should pay Mr and Mrs O the difference, with 8% simple interest added from the date of surrender to the date of settlement.

The investigator said SJP didn't need to separately refund the fees or charges Mr and Mrs O had incurred because the first of the above figures (the value of the bond at surrender) was inclusive of these deductions, so factored into the calculation already.

The investigator added that any additional tax Mr and Mrs O incurred because of the transfer should be refunded separately. SJP should compare the total tax Mr and Mrs O had incurred in respect of the relevant bond contributions with the amount they would've incurred if they'd remained invested in the unit trust. If the second of these figures was lower, SJP should pay Mr and Mrs O the difference.

The investigator said he felt the amounts SJP had already offered Mr and Mrs O for distress and inconvenience and delays, £750 and £500 respectively, were fair in the circumstances. He further noted the £170,000 award limit applicable to the complaint and explained that SJP could not be directed to pay more than that amount if the calculations produced a higher figure, although a recommendation could be made so it might nevertheless choose to do so.

Following further correspondence, SJP accepted the investigator's view and confirmed it was prepared to provide calculations to this service to show what the compensation amounts would be. However, Mr and Mrs O then raised some further areas of loss they felt should be taken into consideration when redressing the complaint. They explained that because of the money being transferred into the bond and the ongoing access issues that presented, they'd incurred costs from having to borrow money, both from family and by way of a mortgage and a loan facility.

They said they'd also missed the opportunity to take advantage of ISA and capital gains allowances, and they'd incurred additional income tax liabilities when they surrendered the entire bond in early 2024. Attempts to gift money had also left their children with additional income tax liabilities.

SJP was asked whether it would be prepared to take these additional losses into consideration, but it declined. It noted that Mr and Mrs O's decision to surrender the bond in its entirety hadn't formed part of the original complaint, which had been made some time prior to the full surrender.

It said their ISA allowances could've been utilised by way of tax-deferred withdrawals from the bond. It also drew attention to documentary evidence that suggested that in 2020 Mr and Mrs O had significant additional funds in addition to the investment in question. It highlighted that the Confidential Financial Report noted that in April 2020 they had £1million of which they were looking to invest £800,000, leaving the remainder for cash savings and home

improvement.

SJP also noted that the loan facility, the costs of which had been raised as an additional loss had in fact been arranged by its adviser in late 2020 to help fund a property purchase for one of Mr and Mrs O's children. The recommendation letter providing details to Mr and Mrs O had also noted the £1million cash amount. And further, that Mr and Mrs O had preferred to borrow as they didn't want to use the cash or draw on invested funds.

In light of SJP's comments regarding the additional losses and the ongoing general lack of agreement around resolution of the complaint, the matter was referred to me to review.

I issued a provisional decision in which I said, in part –

“As noted, during our investigation of Mr and Mrs O's complaint a point was reached at which both parties largely accepted it should be upheld and compensation paid, broadly speaking based on a comparison between Mr and Mrs O's position following the 2017 advice and the position they'd been in if the recommended transfer hadn't taken place. That was in terms of both performance and tax liabilities.

For completeness, I confirm that I agree with the investigator's findings on merits, and for broadly the same reasons. In all the circumstances, I don't think it was suitable to recommend Mr and Mrs O make the transfer from the unit trust to the investment bond.

So, what's left for me to decide is whether the additional losses (those highlighted by Mr and Mrs O following the issuing of the investigator's view and SJP's agreement to redress the complaint as recommended) should also be taken into consideration.

I'd say first that I do appreciate why Mr and Mrs O have raised these losses. The approach of this service when recommending how a complaint should be compensated is based on aiming to put the complainant, as far as possible, back in the position they'd be in if the issue complained about – the incorrect act or omission – hadn't occurred. This was alluded to by the investigator during his investigation of the complaint, so I understand why Mr and Mrs O might feel that the redress proposed doesn't entirely fulfil that objective.

Their financial circumstances are relatively complex and involve large sums, and the complaint was first made just over four years after the transfer to the bond in January 2018.

Much would've happened in the intervening period and clearly actions and decisions taken would've been influenced by the circumstances the unsuitable recommendation placed them in.

But with so many variables in play I find it's very difficult to reach a definitive conclusion on what might or might not have happened if the transfer hadn't taken place. In respect of the specific losses that Mr and Mrs O have highlighted, particular the loss of ISA allowances, it does appear that their circumstances were such that there were other options open to them – for instance, the taking of tax deferred withdrawals from the bond. And it does appear that there was cash available to them to give an element of flexibility – it wasn't the case that all their funds were tied up in the bond, making chargeable gains and additional income tax liabilities inevitable.

I appreciate Mr and Mrs O may dispute the characterisation of their circumstances as set out in the Confidential Financial Report, but the letter of October 2020 sent to them confirmed the substantial amount of cash they held on deposit. I understand their decision to borrow at that point rather than use the cash may have been influenced by the costs involved in taking money from the bond, money that would've been more accessible had it remained in the unit

trust investment. But as I've said, it doesn't appear to be the case that that was the only option open to them.

In respect of the liabilities incurred in surrendering the bond in its entirety in 2024, again I can't see that this was something that Mr and Mrs O were forced to do. They did have the option of a partial surrender.

Ultimately, while acknowledging it may not be perfect, I'm nevertheless satisfied the redress originally proposed by the investigator represents a generally fair and reasonable resolution in all the circumstances, addressing in the round their concerns about performance, tax liabilities and charges."

SJP made no further submissions.

Mrs O added some comments, saying, in brief –

- She didn't agree that the fees and charges were properly disclosed.
- There'd been a change in the way advice was paid for since her and Mr O had first invested in 2008, and this should've been made clearer.
- The charging information she'd seen appeared to be inaccurate and varied for different years.
- They'd been given no opportunity to question the charging with the adviser. She wasn't transparent and avoided talking about them.
- They should've been displayed in monetary terms, not percentages.
- They'd been prevented from making ISA contributions as they always spent the withdrawals available from the investment bond.
- Any additional cash that became available was earmarked for other uses and was spent.
- While SJP may have facilitated the additional borrowing that didn't mitigate the costs – they would never borrow unless they had to.
- They had to make a withdrawal from the investment bond to pay their tax bill in January 2024.
- The benefits of using ISAs were never explained to them.
- They should have been building up their ISAs but instead had to spend the money.

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 want to assure Mr and Mrs O that I've re-read and re-considered everything on the file, alongside the further comments made in response to my provisional decision. But having done so, I find I'm not minded to change my conclusions on either the outcome or the proposed redress. I remain of the view that the advice to transfer into the investment bond in 2018 was unsuitable and they should be compensated.

I've noted Mrs O's comments around charges. While it may be the case that the information could've been set out more clearly or in a different format, I'm not persuaded that Mr and Mrs O were actively misinformed about the charges relating to the advice as they were set out in the documentation. In any event, as Mrs O has acknowledged the proposed redress effectively places them in the position they'd been in if they'd not incurred charges for the advice that has been found to be unsuitable.

The other major point is around potential costs incurred as a result of the bond restricting

access to Mr and Mrs O's money, which hadn't been the case with the unit trust investment. As I said in my provisional decision, the circumstances are such that it's very difficult to reach any sort of definitive conclusion on what might or might not have happened if the transfer hadn't taken place.

I note Mrs O's comments regarding ISAs and the opportunities missed as a result of not having cash available to invest via that route, and I understand why she's voiced those concerns. But on balance, I don't think it's likely that had there been more flexibility available to Mr and Mrs O through them remaining invested in the unit trust, this would've necessarily led to them accruing large ISA balances. A feature of their finances was evolving plans and the spending of money, which, of course, they had every right to do so. But it's also at the crux of the complaint, as the primary reason why moving from the unit trust arrangement to the more restrictive investment bond environment was unsuitable.

Similarly, in respect of borrowing, I take the point that this wasn't Mr and Mrs O's preferred option, but it's clear that over the period in question they had significant sums of money available and *could* have potentially proceeded differently.

As the investigator said previously, it's clear the unsuitable advice, combined with the time it has taken to resolve things, will've caused considerable distress and inconvenience to Mr O and in particular Mrs O. I think it's important that the settlement reflects this, but I note that SJP has already made an offer in this regard. It has agreed to pay £750 for the distress and inconvenience caused, and a further £500 for the delay. I hope Mr and Mrs O will understand figure is already towards the higher end of our guidelines, and because of that I agree with the investigator and do not find that the award should be increased.

Putting things right

In order to put things right, SJP must compare the value of Mr and Mrs O's investment bond (in respect of the contributions made in 2018) on the dates it was surrendered with the amount Mr and Mrs O would've held on those dates had they remained invested in the unit trust. If the second of these values is higher, it should pay Mr and Mrs O the difference.

SJP should also pay 8% simple interest on the difference from the surrender date to the date of settlement.

SJP does not need to refund the fees or the early withdrawal charges Mr and Mrs O have incurred separately. The reason for this is that the first of the above figures (the value of the bond at surrender) is inclusive of these deductions – therefore they are effectively factored into the calculation already.

However, the additional tax Mr and Mrs O may have incurred as a result of the switch should be refunded separately. To that end, SJP should compare the total amount of tax Mr and Mrs O have incurred in respect of the relevant bond contributions with the amount they would've incurred had they remained invested in the unit trust. If the second of these figures is lower, it should pay Mr and Mrs O the difference.

Where I uphold a complaint, I can award fair compensation to be paid by a financial business of up to £170,000, plus any interest and/or costs/ interest on costs that I think are appropriate. If I think that fair compensation is more than £170,000, I may recommend that the business pays the balance.

Decision and award: I uphold the complaint. I think that fair compensation should be calculated as above. My decision is that SJP should pay Mr and Mrs O the amount produced by that calculation – up to a maximum of £170,000.

Recommendation: If the amount produced by the calculation of fair compensation is more than £170,000, I recommend that SJP pay Mr and Mrs O the balance.

This recommendation is not part of my determination or award. SJP doesn't have to do what I recommend. It's unlikely that Mr and Mrs O can accept my decision and go to court to ask for the balance. Mr and Mrs O may want to get independent legal advice before deciding whether to accept this decision.

My final decision

For the reasons given, my final decision is that I uphold the complaint and direct St. James's Place Wealth Management Plc to compensate Mr and Mrs O as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O and Mrs O to accept or reject my decision before 24 July 2025.

James Harris
Ombudsman