

The complaint

Mrs M and the estate of Mr M complains that St James's Place Wealth Management Plc ('SJP'):

- Overlooked one of her late husband's investments with them and failed to sell it down at the time of his death in 2012.
- After subsequently transferring that investment into Mrs M's name in May 2023, she is concerned that she will incur a capital gains tax (CGT) liability that she wouldn't have, had SJP switched the investment to her back in 2012.
- Part of the investment that was moved to Mrs M contained monies within SJP's property fund. As that fund has now been suspended, she is unable to liquidate that element of the investment.

To put things right, Mrs M would like SJP to:

- Calculate whether there has been a financial loss as a consequence of the delay in transferring her late husband's monies to her.
- Pay any CGT tax bill that she incurs as a result of the delays in moving Mr M's investment into her name and their subsequent sale.
- Provide a solution to gaining access to the monies within the property fund.

What happened

Mrs M's husband passed away in April 2012; at the time, she thought that all of their joint investments and the ones held in his sole name with SJP had been transferred to her. However, in late 2022, Mrs M's SJP adviser conducted a search of their records and identified an ISA that Mr M had held that was converted into a unit trust at the time of his death. The unit trust was subsequently marked as 'dormant' but the monies within the plan were not transferred to Mrs M when his other funds were moved into her name.

After identifying the unit trust, the plan was transferred to Mrs M and she subsequently sold the funds down with the exception of the property fund that had been suspended in the interim. It's likely that the encashment proceeds (of the funds that were sold) will be subject to a large CGT liability.

Shortly afterwards, Mrs M decided to formally complain to SJP. In summary, she said that she was unhappy SJP had failed to move the monies from her late husband's plan into her name following his death. She said this meant she'd been unable to sell the investment when she'd wished to make use of her annual CGT exemption. Mrs M explained that she was concerned that if the monies had not been discovered, her wider family wouldn't have

known or benefited from those funds, particularly given SJP had never issued any annual statements about the investment.

As SJP didn't respond to Mrs M's complaint within eight weeks, she brought her concerns to this service. The complaint was then considered by one of our Investigators. She concluded that SJP hadn't treated Mrs M fairly because of their failure to move the late Mr M's monies to his wife following his death. Our Investigator compared the investment growth that the pot had benefited from since Mr M's death to what Mrs M would've received had it been encashed at his death and achieved 8% p.a. simple interest (for deprivation of monies). This calculation showed that Mrs M would receive more back through investment growth rather than the 8% interest comparator. But, as Mrs M will now likely have a CGT liability because of the encashment and her inability to use her previous CGT exemptions, our Investigator was of the view that SJP should cover any CGT liability and pay her the value of the property fund at death (after buying it off her) along with the 8% p.a. simple interest added to the proceeds since then.

SJP, however, disagreed with our Investigator's findings. In summary, they said that they had found a letter demonstrating they'd written to Mrs M following her husband's death about his ISA, explaining that the plan had been converted into a unit trust. The letter also set out a number of options available to her with the funds. However, SJP conceded that they didn't do enough to reunite her with the monies to which she was ultimately entitled but they didn't believe they should be accountable for paying Mrs M's CGT liability. SJP say that's because given our Investigator felt that Mrs M would've sold the investment down at the earliest opportunity, she should only be entitled to 8% p.a. simple interest since 2012. And, from SJP's own calculations, they said that the growth achieved by the fund would cover the notional 8% p.a. simple interest and most of any likely CGT liability.

Our Investigator was not persuaded to change her view as she didn't believe SJP had presented any new arguments she'd not already considered or responded to. Unhappy with that outcome, SJP then asked the Investigator to pass the case to an Ombudsman for a decision.

After carefully considering both sets of submissions, I decided to issue a provisional decision on this case as I explained that I was minded to reach a different conclusion to that of our Investigator. This time gave both parties the opportunity to consider my thoughts and provide any additional evidence to me before I reached my final decision.

What I said in my provisional decision:

I have summarised this complaint in less detail than Mrs M has done and I've done so using my own words. The purpose of my decision isn't to address every single point raised by all of the parties involved. If there's something I've not mentioned, it isn't because I've ignored it - I haven't. I'm satisfied that I don't need to comment on every individual argument to be able to reach what I think is the right outcome. No discourtesy is intended by this; our rules allow me to do this and it simply reflects the informal nature of our service as a free alternative to the courts.

My role is to consider the evidence presented by Mrs M and SJP in order to reach what I think is an independent, fair and reasonable decision based on the facts of the case. In deciding what's fair and reasonable, I must consider the relevant law, regulation and best industry practice. Where there's conflicting information about what happened and gaps in what we know, my role is to weigh up the evidence we do have, but it is for me to decide, based on the available information that I've been given, what's more likely than not to have happened. And, having done so, I'm upholding Mrs M's complaint - I'll explain why below.

Whilst SJP have since provided a letter showing that they did write to Mrs M in October 2012 about her late husband's ISA, they have conceded they didn't do enough to reunite her with the monies to which she was ultimately entitled. So, my decision will focus only on what SJP needs to do to put things right for her.

Using financial services won't always be hassle free and sometimes mistakes occur, but when they do, we'd typically expect the business to put the consumer back into the same, or as close to the same position that they would've been in were it not for the mistake. But, because of the passage of time, often there's a number of ways in which a firm can do that. And, when determining the methodology approach that a firm must adopt, I must give consideration to what I think, on balance, would've happened were it not for the original mistake. Having carefully considered all of the evidence presented to me, I think it's more likely than not that had Mrs M been informed of her late husband's ISA in 2012, that she would've sold the investment down over a number of years, utilising her annual CGT exemptions. I'm satisfied that she would've followed that approach because in her email to our Investigator in September 2024; Mrs M confirmed that she's missed out on being able to utilise her annual CGT exemptions so she could sell the investment down. So, when I think about how SJP should determine whether she's suffered a loss as a consequence of their actions, I'm satisfied that using the 8% p.a. simple interest from the date of her late husband's death is fair and reasonable to both parties in this complaint.

I also say that because, whilst the late Mr M's unit trust is showing a significant gain since his death, equally, if the plan hadn't performed in the same manner or was even showing a loss, it wouldn't have been fair on Mrs M to accept that loss because it's more likely than not that she would've accessed the monies prior to any notional underperformance. So, I would've still expected SJP to adopt the 8% p.a. simple interest approach in that instance too.

In addition, as Mrs M has been unable to utilise her annual CGT exemptions on the unit trust since 2012, I'm of the opinion that SJP should be liable for any CGT liability that she incurs as a result of the unit sale.

As the property fund element of the late Mr M's plan has been suspended, Mrs M is unable to access those monies. However, I think it's likely that Mrs M would have sold down the investment at the earliest opportunity given the chance to do so, and as such, I think it's likely that she would have accessed the property fund units prior to its suspension in 2023. So, I'm of the view that SJP needs to take over Mrs M's property fund units to enable her to access the monies that are currently locked in that fund.

Putting things right

I require SJP to take the following actions to put things right for Mrs M:

Unit trust

Determine the value of the late Mr M's ISA/unit trust at the date of his death (excluding the property fund element).

Calculate 8% p.a. simple interest from that date to the date Mrs M encashed the plan.

SJP should deduct income tax from the payment if required to do so by HMRC.

SJP should compare that return to the performance of Mr M's ISA/unit trust at the date of his death, to the date the plan was encashed*.

*In establishing the past performance of the unit trust over that period, as an ongoing advice service was not provided to the late Mr M, SJP should ensure that any ongoing advice fees that may have been debited from the unit trust are reinstated.

So, that means putting the late Mr M's unit trust into the position it would have been in had any ongoing advice fees not been taken after his death. The investment would have been higher by the value of the fees and any investment returns that the fees would have gone on to benefit from.

SJP must calculate any loss in value of Mr M's unit trust due to the deduction of any fees taken following his death in 2012. To be clear, this will mean calculating the lost investment returns on each fee if applicable, based on the actual investment strategy of Mr M's unit trust, from the date the fees came out to the date that Mrs M encashed the plan.

If the calculation demonstrates that the unit trust achieved a greater return through investment growth rather than the 8% p.a. simple interest approach, then no loss has occurred, and no redress is payable in respect of this element. However, if the calculation reveals the opposite, then any difference must be paid to Mrs M.

SJP should provide details of their calculations to Mrs M in a clear and concise manner.

Capital gains tax

As Mrs M has been unable to utilise her annual CGT exemptions on the unit trust since 2012, SJP should be liable for any CGT liability that she incurs as a result of the unit sale.

However, as the calculation above (under 'unit trust') is likely to show excess funds above the 8% p.a. simple interest approach, SJP can use any difference between the two amounts (of the 8% interest and investment growth) towards the cost of any CGT liability that Mrs M will likely incur.

Mrs M should provide details of her CGT liability in respect of the unit trust sale to SJP in a timely manner to enable the prompt resolution of the matter.

I'm satisfied that this approach is reasonable because if I didn't allow SJP to offset any 'excess' investment growth monies, Mrs M would be benefiting twice from SJP's error.

Property fund

As the property fund element of the late Mr M's plan has been suspended, Mrs M is unable to access those monies. However, as I've explained above, I think it's likely that Mrs M would have sold down the investment at the earliest opportunity given the chance to do so, and as such, I think it's likely that she would have accessed the property fund units prior to its suspension in 2023.

I therefore require SJP to pay the value of Mr M's property fund units at the date of his death to Mrs M. SJP should add 8% p.a. simple interest to the amount from the date of his death to the date Mrs M accepts my final decision. SJP should then take ownership of the property fund units within Mrs M's unit trust.

If it is not possible for SJP to take ownership of the property fund units, then it may request an undertaking from Mrs M that she repays to SJP any amount she may receive from the investment in future.

If required to do so by HMRC, SJP may deduct income tax from any interest payment.

Trouble and upset

I've carefully considered the chain of events presented to me. I don't think there's any doubt that Mrs M has been inconvenienced by SJP's failure to follow up their letter to her of late 2012. I'm therefore of the view that SJP should pay Mrs M £250 for the trouble and upset their inaction has caused to her.

I'm satisfied that the above outcome is fair and reasonable in all of the circumstances.

Responses to my provisional decision

Mrs M confirmed that she accepted the provisional decision as she was keen to draw a line in the sand and move on. However, she did explain that if there was any income tax paid on the dividends or interest paid by the unit trust, it should also be covered by way of restitution. That's because, she said, she'd been able to liquidate the portfolio immediately following her husband's death and those monies would've been placed in her ISA and grown tax-free.

SJP explained that they also accepted the provisional decision. However, they went on to say:

- No ongoing advice fees had been debited from the investment since Mr M's death.
- It was fairer to use the current value of the units within the property fund as a comparator within the calculation as they were actually able to pay Mrs M the value of those units as they are now.
- They wanted to carry out a comparison broadly similar to the above non-property fund redress approach; the value of the units at the date of Mr M's death plus 8% simple interest, compared to the current value, ran to the date Mrs M accepts the final decision.
- It would be fairer to consider the investment as a whole and offset any overall gain or losses between the non-property fund and property fund elements which could then be compared to the amount of CGT Mrs M has to pay.

SJP went on to say that they had undertaken a comparison calculation (which was then shared with Mrs M).

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.

Having carefully considered matters, I'm minded to agree with SJP's proposal to consider the financial impact of both the property and non-property fund elements together in light of the fact that they're able to pay Mrs M the current value of the property fund and, had the property fund not been suspended, it's what I would've instructed them to do anyway.

However, I don't agree with Mrs M that SJP should also pay to her any tax that may have been debited from the unit trust since 2012. I say that because the loss calculation works on the basis that she would've wound the investment down at the earliest opportunity following her husband's death; therefore the 8% p.a. simple interest methodology is the fairest approach in determining any loss. Also, even taking account of any tax that may have been

debited, the investment return from the unit trust still appears to have outperformed the return that she would receive from the 8% interest methodology.

It therefore follows that I'm upholding Mrs M's complaint and SJP should establish the loss to her using the revised approach above (example calculation within the email of 26 June 2025). In addition, SJP should inform Mrs M promptly how the units within the property fund will be treated for CGT when the transaction is undertaken (either cancelled or encashed) so she can submit the necessary information to HMRC in a timely manner.

My final decision

I'm upholding Mrs M's and the estate of Mr M's complaint and require St James's Place Wealth Management Plc to put things right for her in the manner that I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M and the estate of Mr M to accept or reject my decision before 1 August 2025.

Simon Fox
Ombudsman