DRN-5682965

Financial Ombudsman Service

The complaint

Mr and Mrs H complaint about the suitability of advice provided to them by St. James's Place Wealth Management Plc ("SJP") to start an offshore investment bond.

What happened

Mr and Mrs H were existing clients of SJP and in April 2023, following an inheritance, they sought further investment advice. The adviser recommended they invest £410,000 into an offshore bond, alongside funding a unit trust feeder account and ISAs to utilise tax efficiency.

The bond was recommended to achieve joint objectives of capital growth and the provision of additional income, by way of the bond's annual 5% withdrawal allowance. An offshore bond was selected as Mr and Mrs H had flexible residence arrangements, moving between the UK and abroad, and it was felt the offshore version would give them options regarding their tax arrangements. At the time they were in their mid-50s and looking at retirement planning following receipt of the inheritance.

A year later in May 2024 they were looking to make a further contribution to the bond of £600,000. However, the additional costs of doing so prompted them to seek advice elsewhere. This led them to question the original advice, primarily because by this point they felt the bond wouldn't be able to provide the level of 'income' originally planned, the suggested 'offshore' tax efficiencies were unlikely to be of use, and there'd been no thought given to a tax efficient 'exit strategy' in light of their desire to, in time, gift the money to their children.

Following correspondence with their SJP adviser in which these issues were raised and a request made by them that a full surrender be facilitated with the early withdrawal charges (EWC) waived, Mr and Mrs H made a formal complaint in August 2024. No final response was provided by SJP, so the matter was referred to this service.

An investigator considered the complaint but didn't think it should be upheld. He said, in brief;

- Mr and Mrs H had wanted tax efficient capital growth. They'd already subscribed their ISA allowances for the year and provided for future allowances via the unit trust feeder. So, the bond was a tax efficient proposition for further investment.
- They'd invested an affordable sum at a level of risk they could tolerate and had capacity for, based on their investment experience and significant cash deposits.
- The bond was a suitable product when seeking capital growth, income and/or for IHT planning as it could be placed in trust to move funds outside their estates.
- Mr and Mrs H's residential status was fluid, so an offshore bond provided flexibility regarding taxation, which was reasonable justification for the recommendation.
- SJP weren't specialist tax advisers. The terms and conditions advised seeking specialist tax advice before agreeing to the recommendation. The adviser informed Mr and Mrs H that SJP couldn't provide advice on international taxation regimes and advised them to seek specialist advice, which they'd assured the SJP adviser they'd done.

- Information provided by the adviser showed how the charges were deducted over the first six years of the investment term and that withdrawals in years four and five could attract an EWC. This didn't make the overall recommendation intrinsically unsuitable. The EWC could be avoided by reducing the withdrawal amount and/or drawing from other sources, such as their ISA, or cash deposits.
- The adviser had later suggested deferring taking income for more than 12 months as Mr and Mrs T had other cash to draw from. The agenda for the May 2024 review meeting showed that Mr and Mrs H were to review their expenditure, and cash flow needs then decide on taking withdrawals from the bond or leaving it invested. An action point from the meeting was that they would decide the withdrawals for 2024 after reviewing their expenditure needs.
- In respect of disclosure of charges, the suitability report didn't specifically cover them but referred to the illustration and Key Information Document. The illustration showed what those charges might be over the first ten-year term of the investment based on a set of assumptions.
- The effect of the charges at the end of year one (based on the assumptions) was just under £40,000. Mr and Mrs T had said they were expecting to pay charges of around £30,000 over the first six years of the investment inclusive of the initial charge. But this was not what had been disclosed in the illustration.
- SJP imposed the EWC to recoup charges that weren't applied at the outset on a sliding scale basis if necessary. The EWC were explained in the illustration, terms and conditions and Key Information Document. So, they were fair and reasonable.

The investigator noted that Mr and Mrs H had agreed to receive SJP's ongoing advice service and had been charged for it. He was satisfied that at the point the complaint was raised the required reviews had been provided.

Mr and Mrs H didn't accept the investigator's view. They said, in brief –

- The investigator hadn't considered the impact of the fees/charges on the planned withdrawals to supplement their income in the early years, the impact of the tax structure on their IHT planning, nor the impact of tax should they ever want to encash the bond during their retirement.
- He had focused on the capital growth objective but there'd actually been three objectives and two hadn't been met – namely, to routinely supplement their income in the short/medium term and to support their IHT planning.
- The investigator had accepted the adviser's assertion that they didn't need to take income from the bond in 2024 because other sources of funds had subsequently become available, but their circumstances hadn't changed.
- There was no evidence that the 'shortfall management plan' to adapt withdrawals to avoid EWCs in the early years had been in place at the outset.
- Their primary objective had been to create a routine, tax efficient income stream to help simplify their finances and the bond had failed to do that.
- There'd been no exit planning to address how the invested money might eventually be removed from the bond, particularly in respect of them gifting it to their children.
- They'd agreed to the recommendation based on a misunderstanding of the costs.

The investigator wasn't persuaded to change his opinion. He reiterated that SJP had signposted Mr and Mrs H toward specialist tax advice given their residency circumstances. This wasn't shared but the advice was accepted. The further investment advice obtained in 2024 prompted the concerns with suitability, but it wasn't the fault of SJP if Mr and Mrs H hadn't acted earlier.

Information on how the bond would be taxed was provided. In the event of assignment to Mr and Mrs H's children, income tax on any gains could be mitigated through top slicing if they were higher-rate taxpayers at the point of encashment. The need to reduce the level of withdrawals in years four and five to avoid EWC may have been an oversight on the part of the adviser, but it didn't mean the advice had been unsuitable as there was flexibility available to address this and it was beneficial to allow the capital to grow. The withdrawals hadn't been reduced or suspended indefinitely.

Mr and Mrs H maintained that the recommendation hadn't been properly explained to them in terms of the taxation situation, the withdrawals, the EWC and other costs. So, they had been left unable to make an informed decision when they invested in the bond and would've proceeded differently had they been better informed.

As no agreement could be reached, the matter was referred to me to decide.

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 done so, I've come to the same conclusions as those reached by the investigator and will explain why. I want to assure Mr and Mrs H I've read and considered everything on the file. But that said, I'm satisfied I don't need to comment on every point raised to reach what I consider to be a fair and reasonable decision. Where I've chosen not to comment on something, it's not because I haven't considered it. It's because I've focused on what I think are the key issues. That approach is in line with the rules we operate under.

Further, where the evidence is incomplete or inconclusive, I've reached my decision based on the balance of probabilities. That is, what I think is more likely than not to have happened in light of the available evidence and a consideration of the wider circumstances.

At the time the advice was provided, given the identified and documented objectives, I see no reason why the recommendation of the bond was unsuitable. It was a tax efficient vehicle enabling capital growth while also facilitating an 'income' by way of the withdrawals.

I appreciate the concerns Mr and Mrs H have raised concerning the apparent failure of this income objective within the first five years during which EWCs applied. That's both in terms of the suggestion that after the first year income couldn't in fact be taken as planned. And, further, the fact that the 'shortfall management plan' produced by the adviser when concerns were raised shows that the planned level of withdrawals couldn't be maintained for the first five years.

Mr and Mrs H have said that the adviser's view of the matter changed at the first review when the possibility of not taking an income as planned was raised. I can see that the adviser has suggested there was more cash available at this point, although Mr and Mrs H dispute that their circumstances had changed. But it does seem that their financial circumstances were in a state of flux as they wound down their various employments towards retirement and continued to be in receipt of tranches of the inheritance.

I note that in the May 2024 review of Mr and Mrs H's financial plan document it said "*You are still waiting to receive the outstanding sums from your uncle's estate and at this stage do not wish to make any sizable gifts either outright or into trust, and so we will continue to keep this under review at future meetings and look at ways to reduce/mitigate/provide for the inheritance tax liability.*"

I think this supports the idea that their circumstances were not yet set in stone and, as such, it was not unreasonable that the adviser suggest that income not be taken from the bond in 2024 and other sources of funds be used, which would give the investment monies more time to grow. I've not seen that it wasn't possible to take a withdrawal had Mr and Mrs H still wanted to.

When Mr and Mrs H initially raised the issue of the bond potentially no longer being suited to their needs in July 2024 they said, among other things, "*With other sources of funds available that we can continue to draw on long term, we now expect to never want or need to make use of this feature. Our financial position is unchanged so this shift in our plans was an unexpected development which eliminates a key driver for investing in this bond.*"

I appreciate Mr and Mrs H's overall financial circumstances remained fundamentally the same, but as I noted above, there was ongoing change in the detail and given the significant sums and various financial structures involved, I think it was always likely that amendments to plans might be needed or seen to be beneficial. None of this made the advice at the outset necessarily unsuitable.

In respect of the 'shortfall management plan', which the adviser provided later in 2024 when concerns were raised, it did demonstrate that there would need to be a reduction in the annual withdrawals in years four and five, from the estimated £16,400 to £11,275, to avoid EWCs.

I accept this isn't something that appears to have been pointed out to Mr and Mrs H at the outset. It's not clear whether this was because of an oversight on the part of the adviser – she simply hadn't realised the issue would occur – or because she wasn't particularly concerned by it because (as she later suggested) there would've been other options available, with several sources from which additional funds could've been taken (assuming income from the bond at the same level was still needed at that point). Either way, I don't think that additional clarity at the outset would necessarily have led to Mr and Mrs H deciding not to go ahead with the bond. It would still have been a tax-efficient capital growth vehicle that could provide an 'income', as they were seeking.

In respect of the choice of an offshore bond, I don't think this was unreasonable given their residential circumstances and evolving plans. And ultimately it was made clear that SJP couldn't specifically advise on this point and independent tax advice was sought by Mr and Mrs H.

The costs of implementing the bond were set out clearly in the format I would expect to see, in the terms and conditions, the Key Information Document and the illustration. While I appreciate, as is usually the case with this type of product, several different charges/rates applied, in the latter document particularly it was made clear in monetary terms what the effect of all the charges would be in the first year, and beyond.

The total costs (albeit based on assumptions as they had to be) in the first year were shown as £39,400. And this section was followed by another explaining 'How much with the advice cost?', showing the initial advice charge as £18,450. So, I'm satisfied there was appropriate and accurate cost information provided to Mr and Mrs H prior to the implementation of the advice.

Regarding their concern that insufficient regard was given to an 'exit strategy' for the bond it's not apparent from the suitability report that there was a particular objective of early withdrawal or the intention to pass the money to their sons. The issue was nevertheless mentioned, '*You also like the idea that these funds could be gifted into trust or assigned to your sons in the future for estate planning purposes if you feel the funds become surplus to requirement',* suggesting that the issue was considered, but in the context of the primary intention being to keep the bond in place to provide income. The suitability report went on to say that '*An analysis that shows the impact of the income you require, indicates that the funds would not be exhausted until over the age of 100'*.

Ultimately, it appears to be the case that in the face of evolving plans and advice from a different source, Mr and Mrs H now feel they it would be beneficial to invest differently. This is, of course, entirely their prerogative. But in terms of me considering whether SJP acted incorrectly or unreasonably *at the time of the advice* I don't feel able to conclude that it did so.

I think that given the identified objectives in light of Mr and Mrs H's circumstances, the bond was a suitable recommendation. As if often the case with financial advice, there are various ways in which objectives can be achieved. But the existence of an alternative, particularly when there has been changes to the detail of the situation, does not by default render the original advice unsuitable.

In respect of the ongoing advice service issue, as the investigator noted, the service appears to have been provided as it should've been up to the point at which the complaint was made. I'm unsure about the status of the service, and any payments for it, after that point, but in any event I'm unable to consider events subsequent to that as SJP has not had the opportunity to address them.

My final decision

For the reasons given, my final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H and Mr H to accept or reject my decision before 29 January 2026.

James Harris
Ombudsman