

The complaint

Mrs B and Mr H, as the trustees of the Variable Discretionary Trust (account ending 607) ('the trust') have complained about the service they received from St James's Place Wealth Management Plc ('SJPWM') plus the delays experienced when trying to unwind the trust.

What happened

The late Mr and Mrs H set up a Variable Discretionary Trust in 2015. They invested £150,000 into a Discretionary Trust for inheritance tax ('IHT') planning purposes, the lives assured being two of their great grandchildren and the beneficiaries were their five children. As well as Mrs and Mrs H, two of their children were added as additional trustees. £150,000 was invested via a Gift Plan investment bond.

Mrs H died in 2019. Mr H was removed as trustee in June 2020 and died in August 2021. It was decided the assets of the trust would be assigned to the five beneficiaries for surrender which completed between February and May 2021 except for one which completed in December 2021. The trustees say they experienced delays in doing so and raised a complaint with SJPWM.

SJPWM issued its final response to various complaints raised by the trustees about their late parents' estate. Dissatisfied with the outcome they brought their complaint to the Financial Ombudsman Service. Our investigator who considered the complaint didn't think it should be upheld as he wasn't persuaded that SJPWM had caused any undue delay.

The trustees didn't agree the complaint was passed to me for decision. I was thinking of reaching the same conclusion as the investigator, but for different reasons so I issued a provisional decision to allow the parties to respond before I issued my final decision. Here's what I said:

'I'll explain my reasons, but before I do I think it's important to provide further background to this complaint.

In making their complaint the trustees referred to SJPWM's lack of policies and processes in place for deceased accounts and the process in distributing the estate taking from August 2021 to January 2022 in particular. But as four of the five beneficiaries' assets for this trust were distributed before August 2021, I was of the opinion that SJPWM hadn't addressed this point in its final response to the initial complaint raised as that complaint also included complaints about their parents' other assets as well.

SJPWM had previously told us it wasn't aware of any delays regarding the encashment of this Variable Discretionary Trust as in the main it was assigned prior to the death of Mr H.

So, I asked the trustees for clarification of their complaint about this Variable Discretionary Trust bearing in mind they had previously said that SJPWM 'overlooked some of our mother's investments and they weren't dealt with at the time her estate

was being transferred to our father.’ But in this case the majority of the assets within the Variable Discretionary Trust were assigned to the beneficiaries and surrendered between February and May 2021, so after Mrs H died in January 2019 and before Mr H’s death in August 2021.

I asked the trustees if they were complaining that the assignment and surrender of the Variable Discretionary Trust’s assets should have been completed sooner after the death of Mrs H in ‘finalising the assets of [Mr and Mrs H] held by SJP’ and the information/policies in place and guidance they were given about that process.

They responded to say they were starting to get confused about the additional questions being asked of them and that SJPWM should be the first point for clarification as it was their investigation that was flawed. They said they still didn’t understand why SJPWM chose to look at everything post the death of their father when they had mentioned the assets of both of their parents in making their complaint. They also said they thought the investment not dealt with at the time of their mother’s death was an investment bond ending number 842 which wasn’t encashed or repaid upon her death and the tax implications of that. However, that complaint has been dealt with separately and the Variable Discretionary Trust, which is the subject of this complaint, relates to an investment bond number ending 607.

However, as the trustees had expressed dissatisfaction with SJPWM about the provision of, or failure to provide, a financial service, and I was satisfied that as the trustees had referred to ‘finalising the assets of [Mr and Mrs H] held by SJP’ as part of their complaint, I offered SJPWM the opportunity to address the complaint raised about this Variable Discretionary Trust.

It responded to say that it was not looking to issue a further final response to this complaint as it had already provided the details of the Variable Discretionary Trust in its responses to the Financial Ombudsman Service since the complaint was referred to us. But it did provide copies of what it had previously sent which I have relied upon in reaching my conclusion and it passed onto the adviser some questions I had asked which I have also considered.

So, to be clear in my consideration of this complaint, I’ve looked to see if there were any issues in ‘finalising the assets’ of Mrs H as ‘held by SJP’ and I also note from earlier correspondence that SJPWM ‘overlooked some of our mother’s investments and they weren’t dealt with at the time her estate was being transferred to our father. When our father died there was a delay, as for some reason, [SJPWM] didn’t address our mother’s outstanding investment but wanted to deal with our father first assets and then our mothers.’

I’ve provided a lot of detail about the background around the basis of this complaint to ensure the parties understand what I am considering in this decision as the trustees have raised other complaints about the additional investments and advice the late Mr and Mrs H received from SJPWM. This provisional decision deals solely with the Variable Discretionary Trust Gift Plan investment bond number ending number 607 where £150,000 was invested in 2015.

I should also say that we provide an informal complaint handling service, and this is reflected in the way I’ve approached the complaint. This complaint, along with the other complaints the trustees have raised has given rise to large and cross-referenced files which hasn’t always been easy to establish which complaint they relate to, but I have considered the file in full.

However, it's part of my role to identify and concentrate on the core issues I need to address in order to reach what I consider to be a fair outcome. This means I won't necessarily mention everything the trustees have brought to my attention, and I've expressed some of their concerns in my own words. But I will comment on everything that I consider makes a difference to the outcome of the complaint.

In making their complaint to SJPWM the trustees referred to the regulator – the Financial Conduct Authority ('FCA') – and its Principles. These have a wide application, and I have therefore considered all the trustee's points with the Principles in mind as a relevant consideration throughout my decision.

The trustees have asked about the processes SJPWM had in place and have also complained about the guidance and information they received.

I've seen copies of the files for both Mr and Mrs H's estates and can see a considerable amount of correspondence took place between SJPWM and the late Mrs H's family. SJPWM has told us that all information was issued promptly as requested and there were no delays in communication. From what I have seen, all the information about the late Mrs H's assets was promptly provided as requested and the trustees were informed about how to proceed.

However, I've gone on to consider what the delay was between January 2019 – the date of Mrs H's death – and February to December 2021 bearing in mind that the trustees have told us it was clear the trustees/beneficiaries wanted to wind up the Variable Discretionary Trust after the death of Mrs H.

After the death of Mrs H, the underlying clusters of the Variable Discretionary Trust Investment bond were assigned 60 clusters to each of the five beneficiaries and surrendered as follows;

Beneficiary	Assignment date	Surrender date	Payment date	Amount
A	22.02.21	25.03.21	29.03.21	£38,119.00
F	22.02.21	25.03.21	29.03.21	£38,119.00
P	22.02.21	25.03.21	29.03.21	£38,119.00
G	10.09.21	12.11.21	03.12.21	£41,452.10
P2	03.04.21	12.04.21	04.05.21	£39,151.24

So, bearing in mind the trustees' complaint about the length of time taken, I've looked to see what the delay was in reassigning the clusters between Mrs H's death in January 2019 and February 2021 as well as the delays in the later assignments for 'G' and 'P2'.

SJPWM was advised of Mrs H's date of death on 27 January 2019 and a meeting was arranged with the trustees for 27 February 2019 and 'Mum's assets at St James place – what happens/how does it work (assuming all transfer to Dad) (what happens with the inheritance tax...)' was to be discussed. Correspondence continued in March 2019 about the death certificate and valuations of the late Mrs H's jointly and singly held assets.

Upon the death of Mrs H, the ownership of the Variable Trust's Investment Bond was transferred to Mr H as the surviving settlor. However, the current value of the investment bond didn't form part of the estate but would impact for probate purposes as it had failed as a chargeable lifetime transfer so half of the initial amount invested would count towards Mrs H's nil rate band for IHT purposes.

My understanding is that prior to Mrs H's death, Mr H had been unwell, and it was thought more likely he would predecease Mrs H. Unfortunately, Mrs H became unwell and died in January 2019. In the years running up to Mrs H's death, and after, I understand Mr H was becoming more poorly with dementia which resulted in him being removed as trustee from the Variable Trust in June 2020.

I asked SJPWM about the delays in the Variable Discretionary Trust being transferred to the five beneficiaries. It said that as it hadn't been expected for Mrs H to predecease Mr H it was decided that all assets were to be left with, or for the benefit of, Mr H initially. This was because the family had agreed that Mr and Mrs H's capital was to be available in case either of them needed care and so wasn't to be distributed. I don't have evidence of any particular instruction about this, but I think it's more likely as there is reference to this in correspondence and will explain further.

Once the capital was invested into the Gift Plan in Variable Discretionary Trust, Mr and Mrs H no longer had access to it. But they could take income from it if needed up to a maximum of 5% each year. I understand Mr H had stopped taking the income, but that income was available to Mr H if he wished. After Mrs H's death Mr H moved into a care home and I note the costs were around £40,000 per year around the time and seem likely to have been a consideration. I say this because this was later discussed as referred to in an email from one of Mr H's power of attorney on 1 August 2019. He wanted to ensure 'there is a robust evidence base to inform our discussions as ensuring Dad has sufficient money to meet his needs is a responsibility we take seriously.'

With regard to Mrs H's estate during this time, I see from correspondence that the Grant of Probate for Mrs H's estate was granted on 25 June 2019 – and SJPWM confirmed receipt of a copy on 17 July 2019. In that letter it laid out the next steps and said it was waiting for further instructions regarding the transfer of the late Mrs H's assets to Mr H. The late Mrs H's ISA could be transferred to Mr H's name and the relevant forms were included for signature and completion by both executors.

The control of the Variable Discretionary Trust would remain with the four trustees, which included Mr H, who was to be removed because of his poor health. And from around August 2019 onwards I note the siblings were reviewing where their father's assets would be best managed. It was decided in January 2020 that the Investment Bonds only were to remain with SJPWM and in June 2000 Mr H was removed as trustee.

Two of the trustees had an online meeting with their SJPWM adviser on 14 September 2020 and a follow-up email sought clarification on what had been discussed. I can see as part of that discussion the adviser said that he had 'confirmed that the trustees of the gift trust do have the right to distribute monies to the beneficiaries if they so wanted to within Dad's lifetime.' I take 'gift trust' to mean the investment into the Gift Plan in the Variable Discretionary Trust. And the adviser confirmed that the assets could be divided between the beneficiaries at any time.

And with regard to the clarity the two trustees sought, their understanding about the Variable Discretionary Trust was confirmed as being correct – that income from it could be turned on at any time if needed for Mr H – but the need for that was unlikely as by that time as a care plan had been put in place for him. This suggests to me that the care plan had recently been put in place – I can see further quotes for the care plan were still awaited in January 2020 – so assume it happened sometime after that – and so income from the Variable Discretionary Trust was no longer a consideration.

It was then proposed that the portfolio needed to be rebalanced as it had originally been set up on a cautious risk basis in case Mr H did need income – which now wasn't needed – but it was felt the performance had been hampered because of that. In response the adviser made clear that any underlying investments wouldn't have any impact on Mr H as the trustees would be making the decision for themselves – as they were also beneficiaries – rather than their father. Agreement wasn't reached with the other three siblings until confirmation was given to switch one of the investments at the end of November 2020.

The above makes clear to me that there was consistent correspondence between the trustees and SJPWM. And I'm satisfied they were made aware about the possibility to distribute the bond amongst the beneficiaries.

While that proposal wasn't – as far as I can see – given immediately after Mrs H's death, I've borne in mind probate had to be granted, and Mr H removed as trustee. And I'm persuaded the Variable Discretionary Trust was initially to remain intact in case income was needed for Mr H's care home fees until sometime between January and September 2020 during which time a care plan was established. And it was at that point the trustees were advised they had the right to distribute monies to the beneficiaries if they wanted to during Mr H's lifetime.

Clearly this was a complex estate to handle with input from the three trustees (for this Variable Discretionary Trust) and a further two beneficiaries as to how to proceed. So, while the trustees may say they should have been advised of this potential course of action sooner I haven't seen sufficient evidence to persuade me it wasn't unreasonably delayed in being given. Nor have the trustees told me what course of action they would otherwise have taken.

But I take their complaint to mean they wanted to distribute sooner than they did but I'm satisfied with the reasons for the delay. So, I don't think SJPWM has done anything wrong here.

Turning now to the assignment of the bond clusters to the beneficiaries – after the instructions were given by the beneficiaries – SJPWM has told us the possibility of doing so was proposed by the adviser, which for the reasons given above, I'm satisfied was most likely the case. I can see that instructions to assign and sell the beneficiaries' respective shares of the investment bond were given to SJPWM by the five beneficiaries on different occasions. These instructions – via many emails to and from the individual beneficiaries – took place in February/March 2021 and centred around the assignments to the individual, the need for identification, certification etc as well as receipt of surrender proceeds for all the beneficiaries.

However, the beneficiaries decided they wanted the reassignment and sales to go ahead before the end of the tax year which, bearing in mind all the documents/ID needed from all the five beneficiaries, was quite a short time frame but with the exception of two, was achieved.

With regard to the delays for 'P2' I can see that the assignment forms weren't received by SJPWM until 7 April 2021. P2 didn't give instruction to surrender his share until 8 April 2021 after clarification of this was sought by SJPWM and further to him asking for details of the approximate proceeds which SJPWM provided along with the resulting tax position.

And with reference to the assignment and surrender of the assets for 'G', it's not clear to me what caused this. But from what I have seen I think it is likely that one of the beneficiaries apportioned their share of the investment bond to one of their children who was living overseas which suggests there would have been a delay in completion. So, with regard to actual assignment and disposal, I haven't been presented with anything to indicate there were any undue delays. So, I don't uphold this complaint point.

As the plan was disposed of in clusters, the tax was assessed against each of the beneficiaries at the point they chose to encash their shares of the investment bond. The adviser has said he ensured that each of the five beneficiaries were offered the opportunity to pass the money to themselves, their spouses etc – which they did in some cases. This allowed the beneficiaries to minimise their tax positions. So, they had the choice at the time of either withdrawing immediately and pay the tax, or to take longer route and assign the assets out to lower paying family members. The beneficiaries chose the latter option and were able to exit the trusts – as I understand it – without paying any higher rate tax which would have been incurred if they had exited immediately.'

I provisionally didn't uphold the trustees' complaint. There were delays in the decision to assign the bond clusters to the beneficiaries, I thought this was all understandable bearing in mind what looked to be the family's wish to ensure their parents capital remained intact in case it was needed, and they had the costs of care in place for their father.

But even if I was wrong on that point, the trustees were clearly advised they could distribute the bond clusters to the beneficiaries in September 2020 at the latest.

And once the assignments and disposals were requested, I didn't find there were any undue delays.

Neither party responded to my provisional decision.

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.

As neither party responded to my provisional decision with further information or evidence for my consideration, I see no reason to depart from my provisional decision, and I confirm those findings.

My final decision

For the reasons given, my final decision is that I don't uphold the trustees of the Variable Discretionary Trust's complaint about St James's Place Wealth Management Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B and Mr H as trustees of the Variable Discretionary Trust to accept or reject my decision before 10 September 2025.

Catherine Langley
Ombudsman