complaint

Mrs T, Mr F (junior) and Mrs S (as attorneys for Mrs F) and Mrs T and Mr F (junior) (as executors for Mr F) complain about the advice given by St. James's Place Wealth Management Plc ("St. James's Place") both before and after Mr F passed away in December 2014. In particular Mrs T, Mr F (junior) and Mrs S complain about the advice given in respect of Inheritance Tax ("IHT") planning/mitigation provided to Mr and Mrs F prior to Mr F's passing and then to them after Mr F's passing.

Rather than referring to the attorneys for Mrs F as Mrs T, Mr F (junior) and Mrs S, and the executors for Mr F as Mrs T and Mr F (junior) I will, for ease and where relevant and appropriate, simply refer to Mrs T.

background

Mrs T says that Mr and Mrs F first met with St. James's Place in 2005.

St. James's Place has provided our service with a recommendation letter dated March 2006 in which it recommended Mr and Mrs F invest £7,000 each in a Maxi ISA. This letter also states that in November 2005 Mr and Mrs F had invested in a St. James's Place EPSII (saving £110,000 of IHT) and that they didn't wish to address what had been calculated (in March 2006) as being a further potential IHT liability on their estates of £106,000.

St. James's Place has provided our service with a St. James's Place investment bond application dated May 2006 in which it's recorded that Mr and Mrs F wished to invest £20,799.

St. James's Place has provided our service with an asset investment summary dated June 2006 in which it's recorded that Mr and Mrs F had a potential IHT liability on their estates of £119,000 and that they had already affected an EPSII. Reference to the above St. James's Place investment bond (of £20,799) is made.

St. James's Place has provided our service with a confidential client review dated December 2012 in which it's recorded that:

- Mr and Mrs F were both in their mid-seventies and retired
- Mr F was receiving a company pension of approximately £30,000 a year
- Mr and Mrs F were both in receipt of small state pensions
- Mr and Mrs F had a disposable income of approximately £13,000 a year
- Mr and Mrs F owned their main property (valued at £660,000) mortgage free
- Mr and Mrs F owned a second property (valued at £205,000) mortgage free
- Mr and Mrs F held a joint investment bond (valued at £30,530)
- Mr F held a unit trust ISA (valued at approximately £64,000)
- Mrs F held a unit trust ISA (valued at approximately £64,500)

- Mr and Mrs F held a joint bank account (with a balance of £2,000)

- Mr and Mrs F's objectives were to reduce IHT and Income Tax ("IT")

St. James's Place has provided our service with a letter from Mr F dated December 2012 in which reference to a December 2012 meeting is made and that Mr F understood that:

- his and Mrs F's second property should be sold

- the net proceeds from the above sale, plus 50% of his and Mrs F's ISA's, should be invested in a discounted gift trust bond ("DGTB")

- his and Mrs F's joint investment bond, their main property and 50% of their ISAs would "remain in [their] estate"

Mr F passed away in December 2014. Mrs T has provided our service with a note left by Mr F which says should he pre-decease Mrs F then contact with St. James's Place should be made for *"advice on obtaining probate"* and that St. James's Place had been *"responsible for* [his and Mrs F's] *Inheritance Tax planning"*.

Mrs T says that shortly after Mr F's passing she contacted St. James's Place for advice and was told to do nothing for at least six months. A meeting was scheduled for May 2015.

In this May 2015 meeting Mrs T says it was explained to her that Mrs F's estate had a potential IHT liability estimated at £220,000 and what Mrs F should do was sell her second property and invest the proceeds into a DGTB.

In a December 2015 meeting Mrs T confirmed to St. James's Place that Mrs F's second property was ready to be marketed for sale.

In May 2016 Mrs T's husband wrote to St. James's Place (referencing the May 2015 meeting) to confirm that Mrs F's second property had been sold and the proceeds of the same, together with her investment bond and ISA, would soon be available for investing into a DGTB or other IHT efficient investment.

In June 2016 Mrs T's husband wrote to St. James's Place (referencing a 31 May 2016 meeting) to say that he was unhappy that investment into a DGTB (for various reasons) was no longer an option, or a suitable option and that the advice to sell Mrs F's second property and to invest in a number of business property relief ("BPR") schemes (as an alternative to investing in a DGTB) was, in his view, unsuitable.

Shortly after the above letter was sent, and unhappy with the IHT planning/mitigation advice Mr and Mrs F had received over a number of years, Mrs T dispensed with St. James's Place's services.

In July 2016 a new advisor appointed by Mrs T, said:

- Mrs F currently had a taxable estate valued at £530,439 (£1,015,500, plus gifts of £164,939 made in the last seven years less two IHT Nil Rate bands of £325,000)

- Mrs F's estate had a potential IHT liability estimated at £212,175 (40% x £530,439)

- the £1,015,500 included Mrs F's principle mortgage free property and cash on deposit of approximately £355,000

- the cash on deposit included the proceeds of a number of other investments which had recently been surrendered or encashed by Mrs F

- Mrs F should invest £350,000 in a Foresight Accelerated Inheritance Tax Solution, thus reducing her estates potential IHT liability to an estimated £72,175 (£212,175 - [40% x £350,000]).

- the charges of the recommended investment were:

    - initial advice fee of £1,295 (based on time spent and the level of expertise and responsibility of the appointed advisor)

    - implementation fee of £3,500 (1% of £350,000)

    - initial charge of £8,630 (2.5% of £345,205 [£350,000 - £1,295 - £3,500])

    - annual management charge of 4.64% in years one and two of the net sum invested (say £15,617 a year on a sum of £336,575 [£350,000 - £8,630 - £1,295 - £3,500]

    - annual management charge of 1% from year three onwards of the net sum invested (say £3,366 on a sum of £336,575)

    - transaction arrangement fees of between 0.5% and 1.5% a year of the fund value

    - annual administration expenses capped at 0.7% a year of the fund value

In 2007 Mr and Mrs F were invited by St. James's Place to take out Enduring Powers of Attorney ("EPA") at a combined cost of £190. They did so.

In 2009 Mr and Mrs F were invited by St. James's Place to take out Lasting Powers of Attorney ("LPA") at a cost of £195 each. They didn't do so.

In 2015 Mrs F was invited by St. James's Place to take out an LPA at a cost of £820. She did so.

In late 2017, and after Mrs S had received a letter pertaining to funds of £15,000 possibly owned by or due to Mrs F, Mrs T wrote to St. James's Place to complain, amongst other things, that:

- for eight years prior to Mr F's passing nothing or very little had been done in respect of IHT planning/mitigation

- for six months after Mr F's passing nothing had been done in respect of IHT planning/mitigation

- on Mr F's passing Mrs F's estate was left with a potential IHT liability estimated at £220,000
- advice received between May 2015 and June 2016 was inadequate
- at no time was it advised that a life policy be taken out on Mrs F's life
- Mr and Mrs F were advised to take out EPAs rather than LPAs
- it wasn't until December 2015 that it came to light that Mr F's ISA hadn't been transferred to Mrs F

In January 2018 St. James's Place sent Mrs T a final response letter ("FRL") in which it said:

- discussions around IHT took place regularly with Mr and Mrs F prior to Mr F's passing
- it was Mr and Mrs F's wish to sell their second property (rather than surrender or encash a number of their other investments) and to invest the proceeds into a DGTB (or other IHT mitigation investment)
- given the above it wasn't possible to advise Mr and Mrs F on a specific IHT planning/mitigation strategy before Mr F's passing because the second property hadn't been sold
- it wasn't unreasonable to delay IHT planning/mitigation for six months following Mr F's passing
- the advice to take out EPAs then an LPA was suitable
- in May 2015 it advised the sale of the second property (with the view of investing in a DGTB)
- In June 2016 (with the second property sold and Mrs F having been diagnosed with the early onset of dementia) investing in a DGTB was no longer suitable, or even possible
- the advice to invest into a number BPR schemes, and how much, was suitable
- its restricted status would and should have been known to Mr and Mrs F and later known to Mrs T
- life assurance wasn't a consideration in May 2015
- even had life assurance been a consideration in May 2015, the cost may well have been prohibitive
- in any event, after August 2015 life assurance wouldn't have been available given Mrs F's diagnosis of the early onset of dementia

- a letter sent to Mrs S, pertaining to funds of £15,000 possibly owned by or due to Mrs F, was sent in error

- it accepts there was a delay in transferring Mr F's ISA to Mrs F

- it accepts there had been some administration issues and for this it was prepared to pay Mrs F £500

Unhappy with St. James's Place's FRL, Mrs T referred her concerns to our service. In doing so she explained why she disagreed with most of what, if not everything, St. James's Place had said and that what she was seeking by way of compensation for Mrs F was £47,657 broken down as follows:

• Initial advice fee of	£1,295
• Implementation fee of	£3,500
• Initial charge of	£8,630
• Fees 03/087/16 to 30/09/17 of	£19,612 (£2,481 + £7,787 + £9,344)
• Estimated Fees 30/09/17 to 03/08/18	£14,000
• Sub Total	£47,037
• EPA/LPA issue	£620 (£190 + £820 - £390)
• Total	£47,657

This complaint was considered by one of our adjudicators who issued the parties a first view concluding that the complaint should be upheld and that St. James's Place should:

- pay £500 (as it said it was prepared to do in its FRL) for the delay in transferring Mr F's ISA investment to Mrs F and for sending Mrs S an erroneous letter in October 2017

- pay the difference between the costs and fees incurred as a result of Mrs T acting on the advice she received (in respect of Mrs F) in June 2016 (from a new advisor) – estimated by Mrs T as being £47,037 – and what she would have incurred prior to this date had she received different advice from St. James's Place.

Mrs T responded to say:

- she accepted St. James's Place's offer to pay Mrs F £500 for the delay in transferring Mr F's ISA investment to Mrs F and for sending Mrs S an erroneous letter in October 2017

- Mrs F should be paid £620 for the EPA/LPA issue

- Mrs F should be paid £47,850 for additional fees and costs incurred, this being the difference between £48,850 of costs and fees incurred as a result of acting on the advice received in June 2016 (from a new advisor) and £1,000 of costs and fees that would have been incurred had she received different advice from St. James's Place

- Mrs F should receive interest on any award made and paid

St. James's Place responded with a number of points for the adjudicator's consideration, including the question as to why Mrs T should be compensated for the ongoing costs of the 2016 investment when similar ongoing costs would have been payable on any investment it might have advised she invest in.

The adjudicator considered both parties' responses to his first view and then issued a second view concluding that the complaint should be upheld and that St. James's Place should:

- pay £500 (as it said it was prepared to do in its FRL) for the delay in transferring Mr F's ISA investment to Mrs F and for sending Mrs S an erroneous letter in October 2017

- pay the difference between the initial costs and fees incurred as a result of Mrs T acting on the advice she received in June 2016 (from a new advisor) – estimated by her as being £13,425 – and what initial costs and fees that would have been incurred prior to this date had she received different advice from St. James's Place

- interest on the above sum of 8% simple per annum from the date of payment to the date of settlement

- pay £620 for the EPA/LPA issue

- interest on the above sum of 8% simple per annum from the date of the last payment to the date of settlement

- pay the difference in the sale price of the second property and its value at the date of settlement

- pay the loss of any rent forgone as a result of the second property being sold from the date of sale to the date of settlement

- interest on the above sum of 8% simple per annum from the date of each monthly loss to the date of settlement

- pay £500 for the distress and inconvenience this whole matter has caused

Mrs T responded to say she disagreed with no compensation for the ongoing fees (for the June 2016 investment) being awarded.

St. James's Place responded to say:

- it agreed to pay £500 for the delay in transferring Mr F's ISA investment to Mrs F and for sending Mrs S an erroneous letter in October 2017

- it agreed to pay £620 for the EPA/LPA issue

- it agreed to pay interest on the above sum of 8% simple per annum from the date of the last payment to the date of settlement

- it agreed to pay £500 for the distress and inconvenience this whole matter has caused

- it didn't agree to pay the difference between the initial costs and fees incurred as a result of Mrs T acting on the advice she received in June 2016 (from a new advisor) – estimated by her as being £13,425 – and what initial costs and fees would have been incurred prior to this date had Mrs T received different advice from it because such costs and fees can't be calculated with any degree of certainty

- it's entirely possible that any initial costs and fees that might have been incurred, had Mrs T received different advice from it, might be more than the initial costs and fees ultimately incurred by her in June 2016

- it didn't agree to pay the difference in the sale price of the second property and its value at the date of settlement and the loss of any rent forgone as a result of the second property being sold from the date of sale to the date of settlement on the grounds to sell the property wasn't the wrong thing to do

The adjudicator considered both parties response to his second view and then issued a third view concluding that the complaint should be upheld and that St. James's Place should:

- pay £500 (as it said it was prepared to do in its FRL) for the delay in transferring Mr F's ISA investment to Mrs F and for sending Mrs S an erroneous letter in October 2017

- pay £620 for the EPA/LPA issue

- pay interest on the above sum of 8% simple per annum from the date of the last payment to the date of settlement

- pay £500 for the distress and inconvenience this whole matter has caused

However he concluded that St. James's Place need not:

- pay any losses that might have flowed from the sale of the second property on the grounds that there is insufficient evidence that Mr and Mrs F were provided with false or misleading information that such a sale was the only option open to them

- refund any fees and costs incurred in taking the June 2016 investment as there is insufficient evidence to show that less fees and costs would have been incurred had St. James's Place provided Mrs T with different advice

Mrs T responded to say she disagreed with the adjudicator's third view and believed Mrs F should be paid:

- £40,000 to £68,951 for loss of appreciation on the sold property
- £48,740 for loss of rent on the sold property
- £26,550 excess investment charges and fees
- interest on the sum of £26,550
- £620 for EPA/LPA issue
- interest on the sum of £620

- £1,000 for maladministration
- An unquantified sum for distress and inconvenience
- further loss of rent going forward, including retention of the house post Mrs F's passing

The adjudicator considered Mrs T's response to his third view but wasn't persuaded to change his mind. Therefore the complaint was passed to me for review and decision.

I issued a provisional decision on this case in November 2019. In summary I said:

> I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.
>
> It's clear both parties have very strong feelings about this complaint. Both have provided detailed submissions in support of their respective views which I can confirm I've read and considered in their entirety. However, I trust that the parties will not take the fact that my findings focus on what I consider to be the central issues, and that they are expressed in considerably less detail, as a discourtesy. The purpose of my decision isn't to address every point raised. The purpose of my decision is to set out my conclusions and reasons for reaching them.
>
> I would also like to point out that where the evidence is incomplete, inconclusive or contradictory, I make my decision on the balance of probabilities - that is, what I consider is most likely to have happened given the evidence that is available and the wider surrounding circumstances.
>
> Mrs T agrees that payment by St. James's Place of £500 represents sufficient compensation for the delay in transferring Mr F's ISA to Mrs F and for the erroneous letter it sent to Mrs S. So other than confirming I think this represents a fair and reasonable sum for St. James's Place to have to pay in this respect, I make no further finding or comment on this particular issue.
>
> Mrs T agrees that payment by St. James's Place of £620 (plus interest) represents sufficient compensation for the EPA/LPA issue. So other than confirming I think this represents a fair and reasonable sum for St. James's Place to have to pay in this respect, I make no further finding or comment on this particular issue.
>
> *advice given prior to Mr F's passing in December 2014*
>
> It's clear Mr and Mrs F first became clients of St. James's Place in 2005 and they remained so up to the date of Mr F's passing in December 2014. It's also clear that Mr and Mrs F had a desire to mitigate (in full or in part) IHT on their respective estates.
>
> However what's not particularly clear is exactly what might or might not have been agreed as being an appropriate strategy for Mr and Mrs F to adopt to achieve their desire to mitigate IHT on their respective estates.

However, having considered what both parties have said and submitted, I find St. James's Place's submission that Mr and Mrs F didn't want to – for whatever reason – utilise the value tied up in their other investments (at least in the main) for IHT planning and mitigation purposes, but would rather utilise the value tied up in their second property instead, to be both plausible and persuasive. I've come to this conclusion having had regard, amongst other things, to the following:

- It appears that Mr and Mrs F invested a substantial lump sum from their other investments into an IHT mitigation investment in 2005 (on the advice of St. James's Place) suggesting that they could or would have understood that investment (into an IHT mitigation investment) from their other investments was always an option.

- Mr and Mrs F don't appear to have been financially naïve, albeit I accept they couldn't reasonably have been classed as being sophisticated investors. I say this given the rather substantial portfolio they held, the mix of investments in the same and given that their second property was held, based on Mrs T's own submission to our service, in some sort of trust arrangement.

- Mr and Mrs F, having had ownership of two properties for some time, would in my view have understood the risks of selling rather than holding onto their second property, for example the risk that the sale proceeds might return (on investment) a smaller sum than would have been returned by way of future rent and property price appreciation.

So taking everything into account I find on the balance of probabilities that prior to Mr F's passing that although Mr and Mrs F had a desire to mitigate their respective IHT estate liabilities they were only prepared to do so from the funds tied up in their second property and not from their other investments and that they understood, or ought to have understood, that advice on how to best invest these sale proceeds (in full or in part) couldn't reasonably be given until their second property had been sold.

advice given between December 2014 (the date of Mr F's passing) and April 2015

I can see that following Mr F's passing in December 2014, Mrs T was advised to do nothing for six months. Now I appreciate Mrs T says this was unsatisfactory, but I disagree. Given Mrs F's age at this time, what was known about her health and her circumstances and financial position and given that she had just lost her husband, I think that advising nothing be reviewed or done for six months was entirely appropriate.

But even if I wasn't of this view and even if I was to accept that Mrs T might have done something different had advice been given to her during this six month window the fact remains that prior to Mr F's passing in December 2014 it was Mrs F's desire to mitigate IHT by investing (appropriately) the proceeds from the sale of her second property and not through the reinvestment of other investments she held. And during this six month period Mrs F's second property remained unsold.

advice given between May 2015 and July 2015

I can see that in May 2015 Mrs T was advised that Mrs F should sell her second property and invest the proceeds into a DGTB. Now although there might have been alternative options available at this point in time I'm not persuaded this advice was unsuitable. I say this given that investing in a DGTB is one way of mitigating IHT and it was Mrs F's desire (along with Mr F prior to his passing) to sell the second property and invest in this manner rather than utilise other investments. For the sake of completeness I would also add that I don't think it was unreasonable for St. James's Place to have not recommended, during this three month window, that Mrs F take out life cover given her age and what was known about her state of health - amongst other things.

advice given between August 2015 and December 2015

I can see that in December 2015 Mrs T confirmed to St. James's Place that Mrs F's second property was ready to be marketed for sale. I can also see that Mrs T says that St. James's Place was made aware at some point during this five month window of Mrs F's diagnosis of the early on-set of dementia.

But I don't think that any of the above meant that St. James's Place should have advised on an investment strategy sooner than it ultimately did. In this respect I think it's worth noting that it was a long standing desire of Mrs F (and Mr F prior to his passing) to sell the second property (which during this window still hadn't happened) and that life assurance would have been impossible to arrange, or very expensive to arrange.

advice given between January 2016 and April 2016

I can see that during this period no advice was given by St. James's Place. But for the same reasons as given above I don't think this was unreasonable.

advice given in May 2016

I can see that in May 2016, when the second property had been sold and the proceeds had become available (with other investment funds) for investment, investment into a DGTB was no longer an option, or at least a suitable option according to St. James's Place. And what St. James's Place advised Mrs F should do was to invest in 4 BPR schemes.

I appreciate that it might have been possible for investment into a DGTB to be made in May 2016, but in my view it was entirely reasonable for St. James's Place to discount this as an option (given Mrs F's health) in favour of investment into 4 BPR schemes. And that investment into one or more BPR schemes offered a way of mitigating IHT (albeit there is a two year waiting period).

advice given between December 2014 (the date of Mr F's passing) and May 2016

Even if I wasn't of the above view as to the suitability of the advice given, I'm not persuaded that any loss has been suffered. I accept that Mrs F has incurred fees and costs of approximately £50,000 by investing in the manner that she did in 2016 on the advice of a new advisor, but I've seen insufficient evidence that similar costs and fees wouldn't have been incurred had Mrs F invested sooner than this and on the advice of St. James's Place.

In my view had Mrs F invested sooner than she ultimately did, and in a manner that was suitable, the costs of doing so would have been similar to the costs she has now incurred. I say this having regard to, amongst other things, that Mrs T herself submits that investing in the BPR schemes recommended by St. James's Place – whether in May 2016 or earlier – would have involved *"eye wateringly expensive"* initial and ongoing management fees and a 4.5% initial advice fee. And that life assurance (prior to July 2015) would have cost between £22,500 and £14,400.

restricted advice status

Mrs T says she was never advised of St. James's Places' restricted advice status. Now I accept I can't say for certain, but on the balance of probabilities I think that it's more likely than not that she was. I say this because, amongst other things, I see no reason why this information would have been withheld from her and this information appears to have been shared with Mr and Mrs F as early as 2006. I say the latter because the advice letter provided to Mr and Mrs F in March 2006 says:

"When we met, I provided you with both our "Key Fact about our Services" document that described, amongst other things, the products we offer, the service we provide, our financial arrangements with St. James's Place and our Terms of Business. If you have any queries on this document please let me know.

During our meeting, I went through with you the various areas of financial planning I can advise you on."

other matters

I can see that the adjudicator recommended that St. James's Place pay £500 in addition to the £500 for the delay in transferring Mr F's ISA to Mrs F and for sending Mrs S an erroneous letter in October 2017. Given what I say above I think this represents an appropriate sum for St. James's Place to have to pay for any trouble and upset that might have been caused here and which might have been avoidable.

summary

In summary I'm not persuaded the advice Mr and Mrs F received before Mr F's passing and the advice Mrs T received after Mr F's passing was unsuitable, or that a material financial loss has been incurred.

I then went on to outline what St. James's Place should pay Ms F by way of compensation.

St. James's Place responded to say it had nothing further to add and that it accepted my provisional decision.

Ms T responded to say that she disagreed with my provisional decision. As well as reiterating a number of her previous submissions she said, in summary:

advice given prior to Mr F's passing in December 2014 – (2005 to 2006)

- Mr and Mrs F didn't invest a substantial lump sum from their other investments into an IHT mitigation investment in 2005 (on the advice of St. James's Place) saving £110,000 IHT. What they did (following a referral by St. James's Place to a solicitor) was to transfer the second property into their joint names from Mr F's sole name, for new wills to be drawn up and for two discretionary trusts to be established.

  Under their new wills Mr and Mrs F both left (to their respective established trust) assets to the value of their nil rate IHT band, thus allowing both of them to benefit from such an allowance, something they wouldn't have been able to do had they simply left their entire estate to the other. Based on a nil rate band of £275,000 this piece of planning saved £110,000 IHT.

- My notion that Mr and Mrs F *"had a good measure of financial acuity"* is quite implausible.

- From 2005 onwards various money started to come under St. James's Place's control. But none of this money was invested with the view of mitigating IHT.

- St. James's Place's recommendation letter dated March 2006 clearly evidences that Mr and Mrs F weren't at all concerned about IHT, yet some thirteen years later St. James's Place submits it was actively responding to Mr and Mrs F's concerns about IHT in 2006 – the complete opposite.

- In its recommendation letter dated March 2006 St. James's Place describes Mr and Mrs F as being passive investors, demonstrating they weren't sophisticated investors.

- St. James's Place's recommendation letter dated March 2006 states Mr and Mrs F only needed access to £17,000 so why in 2016 was St. James's Place holding onto £200,000 ISA and investment bond monies?

advice given prior to Mr F's passing in December 2014 – (December 2012)

- If Mr and Mrs F were so *"switched on"* or *"savvy"* then why did they allow their potential IHT liability almost double between March 2006 and December 2012?

- I've suggested that Mr and Mrs F's unit trust investments and ISA investments were separate and distinct but they were one and the same.

- If in December 2012 it was Mr and Mrs F's objective to mitigate IHT, then why did St. James's Place advise Mr F, if indeed that's what it did, to sell the second property and invest the proceeds, together with 50% of his and Mrs F's ISA funds, in a DGTB rather than advise he sell the second property and invest the proceeds, together with 100% of his and Mrs F's ISA funds and 100% of their joint investment bond funds, in a DGTB.

- In December 2012 St. James's Place advised that the only way to protect the second property from IHT was to sell it and invest the funds in a DGTB. This advice was unsuitable and a number of other options were available.

advice given prior to Mr F's passing in December 2014 – (2013 to 2014)

- During this time Mr F's health deteriorated resulting in his passing in December 2014. Yet during this period nothing was done by St. James's Place to mitigate his and Mrs F's potential IHT liabilities.

advice given between December 2014 (the date of Mr F's passing) and April 2015

- It should have been obvious and apparent to St. James's Place that on Mr F's passing it was paramount that Mrs F's desire to mitigate her IHT liability was addressed. Therefore it was entirely inappropriate to suggest that nothing be done for six months.

- Had she been advised of Mrs F's potential IHT liability in December 2014 she might have decided to seek advice elsewhere and might have secured, at a reasonable cost, cover on Mrs F's life.

advice given between May 2015 and July 2015

- In the May 2015 meeting, and having discovered there was a potential £220,000 IHT liability in respect of Mrs F's estate, she was advised that *"the only way"* this could be mitigated was to sell the second property and invest the proceeds in a DGTB. This advice was unsuitable and a number of other options were available (including life assurance).

- At no time did Mr and Mrs F have a longstanding wish or desire to sell the second property.

advice given between August 2015 and December 2015

- At no time during this period, and fully aware that Mrs F had been diagnosed with very early stage dementia, was she advised to hold off selling the second property.

advice given in May 2016

- Despite being asked how to best invest the second property sale proceeds and other monies, St. James's Place said it could/would only recommend that Mrs F invest the second property sale proceeds (and nothing else) into 4 BPR schemes. It didn't recommend investing any other monies into these BPR schemes, or point out that approval could be sought from the Court of Protection to invest the second property sale proceeds and other monies in a DGTB as previously advised.

advice given between December 2014 (the date of Mr F's passing) and May 2016

- I'm wrong to conclude that that no more costs and fees were incurred by Mrs F investing £350,000 in the manner that she did than she would have incurred had she invested sooner in an alternative investment and on suitable advice from St. James's Place.

restricted advice status

- It defies plausibility that she knew about St. James's Place's restricted advisor status.

other matters

- St. James's Place failed to write any follow up letters detailing its advice and recommendations between December 2014 and June 2016 something that it could and should have done.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Mrs T has provided substantial and detailed submissions in response to my provisional decision. And whilst I don't intend to respond in similar detail, I can confirm that I've read them all and taken them all into account when making my decision. So if I don't mention a particular point, or piece of evidence, or answer a particular question, it isn't because I haven't seen it or thought about it. It's just that I don't feel I need to, to explain my decision. Again I hope Mrs T doesn't take this as a discourtesy; it's just a reflection of the informal nature of our service.

Mrs T still agrees that payment by St. James's Place of £500 represents sufficient compensation for the delay in transferring Mr F's ISA to Mrs F and for the erroneous letter it sent to Mrs S. So other than confirming I think this represents a fair and reasonable sum for St. James's Place to have to pay in this respect, I make no further finding or comment on this particular issue.

Mrs T still agrees that payment by St. James's Place of £620 (plus interest) represents sufficient compensation for the EPA/LPA issue. So other than confirming I think this represents a fair and reasonable sum for St. James's Place to have to pay in this respect, I make no further finding or comment on this particular issue.

advice given prior to Mr F's passing in December 2014 (2005 to 2006)

In my provisional decision I said:

"However, having considered what both parties have said and submitted, I find St. James's Place's submission that Mr and Mrs F didn't want to – for whatever reason – utilise the value tied up in their other investments (at least in the main) for IHT planning and mitigation purposes, but would rather utilise the value tied up in their second property instead, to be both plausible and persuasive. I've come to this conclusion having had regard, amongst other things, to the following:

- *It appears that Mr and Mrs F invested a substantial lump sum from their other investments into an IHT mitigation investment in 2005 (on the advice of St. James's Place) suggesting that they could or would have understood that investment (into an IHT mitigation investment) from their other investments was always an option."*

First I would like to make it clear that I didn't come to the view that Mr and Mrs F invested a substantial sum from their other investments into an IHT mitigation investment in 2005 based on something St. James's Place specifically told me. Rather I came to this incorrect view based on my interpretation of the various paperwork that had been provided.

Now based on what Mrs T has now kindly said and submitted, I accept that what appears to have happened in 2005 is that Mr and Mrs F were referred to a solicitor by St. James's Place and this solicitor, in 2006, produced for Mr and Mrs F two new wills which gave them a combined IHT saving of £110,000. But this doesn't lead me to change my view.

Given the various discussions Mr and Mrs F had with St. James's Place prior to December 2014, the discussions they had with the solicitor in 2005/2006, the make-up of their respective portfolios between 2005 and 2014 and how long they had owned two properties prior to December 2014, I'm satisfied that on the balance of probabilities that although Mr and Mrs F had a desire to mitigate their respective IHT estate liabilities they were only prepared to do so from the funds tied up in their second property and not from their other investments. And that they understood, or ought to have understood, that advice on how to best invest these sale proceeds (in full or in part) couldn't reasonably be given until their second property had been sold.

I accept that Mr and Mrs F weren't sophisticated investors but I remain of the view, given how they had invested over the years, that they weren't financially naïve.

I accept that from 2005 onwards various money started to come under St. James's Place's control and that none of this money was invested with the view of mitigating IHT.

But I wouldn't expect for this money to have been invested in this way given that it had been recorded in St. James's Place recommendation letter dated March 2006 that Mr and Mrs F didn't, at that point in time, wish to mitigate any further IHT accruing on their respective estates.

Mrs T says St. James's Place's March 2006 recommendation letter can't be reconciled with its submissions some thirteen years later that it was actively responding to Mr and Mrs F's concerns about IHT in 2006. But I disagree.

In my view when St. James's Place's March 2006 recommendation letter is considered in its entirety IHT was a concern to Mr and Mrs F and St. James's Place in 2006. But having just mitigated £110,000 (by having two new wills written) Mr and Mrs F just didn't want to take steps straight away to mitigate any further IHT.

I also think it's worth pointing out what mitigating IHT involves. In essence it involves individuals being advised to relinquish control, one way or the other, of their wealth. And whilst with the benefit of hindsight, some years later, it could be submitted that those individuals could or should've been advised to do more, in the particular circumstances of this case I remain of the view that having just saved their estates over £100k Mr and Mrs F simply didn't feel it was that urgent for them to take any further steps given what that would entail. I certainly don't agree that this letter evidences that Mr and Mrs F were *"not at all concerned"* about IHT.

I accept that being passive investors might suggest a lack of sophistication. But regardless of how St. James's Place might have described Mr and Mrs F in March 2006 I remain of the view, and for reasons already given, that they couldn't be described as having been naïve investors in 2006, or subsequently.

Mrs T says that if in March 2006 it was noted that Mr and Mrs F didn't need access to any of their capital bar £17,000, why did St. James's Place still have £200,000 under its control/management in 2016 invested in ISAs and an investment bond?

I can understand the point Mrs T is making but she has misunderstood what is meant by 'accessible". Now I appreciate she might view money in the types of ISA and investment bond held by Mr and Mrs F as being accessible, but in respect of financial advice accessible means cash on deposit, for example in a bank savings account. So I don't think that by keeping money invested in the ISAs and investment bond held by Mr and Mrs F, in 2006 or subsequently, meant that St. James's Place had disregarded Mr and Mrs F's need to have access to only £17,000.

I would also add that if Mrs F is suggesting that by not switching money held in ISAs and an investment bond into IHT efficient investments St. James's Place has disregarded what Mr and Mrs F were looking to achieve, I would reiterate that in March 2006 this wasn't what was recorded as being something Mr and Mrs F wanted to do.

advice given prior to Mr F's passing in December 2014 – (December 2012)

I note that in March 2006 Mr and Mrs F had a potential IHT liability calculated at £106,000. However I can't see that this almost doubled between March 2006 and December 2012. In my view it increased by about 40%. But regardless of how much this liability had increased by between March 2006 and December 2012 I'm not persuaded this indicates that Mr and Mrs F were naïve investors.

In my view this simply indicates that in December 2012 Mr and Mrs F had decided that the time was now right to look at mitigating their respective estate IHT liabilities, having previously decided in March 2006 not to do so.

I accept that Mr and Mrs F's unit trust investments and ISAs were one and the same, rather than separate and distinct investments. This is because having reviewed what has been said and submitted I can see that what Mr and Mrs F held in December 2012 were two unit trust investments in ISA 'wrappers'. However, any misunderstanding on my part in this respect had no bearing on my provisional findings and conclusion.

I agree that based on Mr F's letter dated December 2012 he understood that St. James's Place had advised him to sell the second property and invest the proceeds, together with 50% of his and Mrs F's ISA funds, in a DGTB. But what is unclear is what other strategies, if any, might have been discussed and discounted.

But regardless of what other strategies had or hadn't been discussed I'm satisfied that this advice wasn't unsuitable. I say this because this course of action would have taken, everything else being equal, £270,000 out of Mr and Mrs F's estates potentially saving £108,000 in IHT. And when considering whether advice given was suitable, I only need to be satisfied that it was, not that it was the most suitable.

I also don't think that advising Mr and Mrs F to keep in the region of £65,000 in ISAs and £30,000 in an investment bond, if indeed that is what St. James's Place did, was unsuitable. I would also add, notwithstanding that I've already explained as to what is generally meant by accessible funds, that the fact that that Mr and Mrs F only needed access to £17,000 in March 2006 meant that the same was true in December 2012.

Mrs T submits that in December 2012 St. James's Place advised that the only way to protect the second property from IHT was to sell it and invest the funds in a DGTB and this advice was unsuitable because a number of other options were available.

First I've seen nothing to suggest that St. James's Place advised Mr F that the only way to protect the second property from IHT was to sell it. As I say above, it's quite possible that a number of options were discussed with Mr F and discounted. But even if they weren't, I remain of the view that advising Mr F sell the second property and invest the proceeds in a DGTB wasn't unsuitable advice given what everybody accepts Mr F (and Mrs F) were looking to achieve in December 2012.

I note that Mrs T views the second property as being an income generating and capital appreciating asset. However this isn't guaranteed. Properties can capital depreciate as well as appreciate and there is no guarantee that a property can be let, or let 100% of the time. Furthermore investments (depending on the type) don't just generate income but appreciate (and depreciate) in capital value very similar to a property. I also think it's worth pointing out that any appreciating asset, everything else being equal, would increase an individual's potential IHT liability, the very thing Mrs T says Mr and Mrs F were looking to avoid or mitigate.

I accept that life assurance was an option open to Mr and Mrs F in December 2012. But because no such cover was placed on risk by St. James's Place, whether as a result of the same not being discussed or it being discussed and discounted, doesn't make St. James's Place's advice in December 2012 unsuitable.

advice given prior to Mr F's passing in December 2014 – (2013 to 2014)

I accept that during this period Mr F's health deteriorated resulting in his passing in December 2014. And St. James's Place did nothing in this period to mitigate Mr and Mrs F's potential IHT liabilities. But given that in December 2012 it was agreed that Mr F would sell the second property, and at the time of his passing that hadn't happened, I find it entirely reasonable that nothing happened during this period.

Also during this period I've seen nothing to suggest that St. James's Place was made aware of Mr F's deteriorating health.

advice given between December 2014 (the date of Mr F's passing) and April 2015

I accept that on the passing of one party to a marriage the need to mitigate the surviving party's potential IHT liability, if IHT mitigation is of concern, becomes more important. But I remain of the view that in all the circumstances of this case it was entirely reasonable for St. James's Place to suggest that nothing be done for six months.

It should also be noted that on Mr F's passing there was very little, if anything, that could be done to mitigate Mr F's estate's IHT liability. Secondly, I've seen nothing that would lead me to conclude that St. James's Place could, or should, have reasonably contemplated the risk of Mrs F being diagnosed with the early onset of dementia in the near future.

I would also add that when I made reference in my provisional decision to Mrs F's age, what was known about her health and her circumstances and financial position in 2014/15 what I meant by this was there was nothing to suggest;

- she, being in her in her late seventies, had anything other than a standard life expectancy of ten years (compared to say a life expectancy of only three years for somebody in their late nineties)
- she was in anything other than good health
- she had any immediate need for investments held to be surrendered, to generate cash for example

I accept that had Mrs T been advised of Mrs F's potential IHT liability in December 2014, or shortly afterwards, she might have sought advice elsewhere and might have secured cover on Mrs F's life. But I make no finding on this point because I remain of the view that St. James's Place acted entirely appropriately in advising that nothing be done for six months.

advice given between May 2015 and July 2015

Mrs T says that in the May 2015 meeting she was advised that the only way to mitigate the IHT liability on Mrs F's estate was to sell the second property and invest the proceeds in a DGTB and this advice was unsuitable and a number of other options were available.

I accept that I can't say for certain what was and wasn't discussed at this meeting but I'm not persuaded, on the balance of probabilities, that St. James's Place would have told Mrs T that the only option was to sell the second property.

But in any event, and as I've said previously, I don't find the advice to sell the second property and to invest the proceeds in a DGTB to have been unsuitable.

For the sake of clarity I would add that when I said in my provisional decision that in 2015 Mrs F had a (longstanding) desire to sell the second property what I meant by this was that this was the course of action that had been discussed and agreed with Mr F two and half years previously in December 2012. And this was a course of action that he (and Mrs F) appeared to be happy with.

advice given between August 2015 and December 2015

I accept that during this period Mrs T wasn't advised to hold off selling the second property, but I see no reason why St. James's Place should have done so given that he sale of the second property was something that had been agreed with Mr and Mrs F in December 2012 as something they wanted to do, or appeared to be happy to do.

advice given in May 2016

Mrs T says that in May 2016 she was advised by St. James's Place that Mrs F should invest the second property sale proceeds into 4 BPR schemes and this advice was unsuitable.

Now I appreciate a number of other options might have been available. But ultimately as this advice was never accepted, and advice was sought from a new advisor and acted upon only a few months later, I'm satisfied that it isn't material to the outcome of this complaint as to whether this advice was suitable.

advice given between December 2014 (the date of Mr F's passing) and May 2016

Mrs T says I was wrong to conclude that that no more costs and fees were incurred by Mrs F investing £350,000 in the manner than she did than she would have incurred had she invested sooner in an alternative investment and on suitable advice of St. James's Place.

However, and I appreciate Mrs T's strength of feeling on this point, I remain of the view for the reasons I've already given that that the cost of investing in a different manner and earlier would have resulted in similar costs to those ultimately incurred by Mrs F.

restricted advice status

Mrs T submits that at no time was she advised of St. James's Place's restricted advice status. However, and again I appreciate Mrs T's strength of feeling on this point, I remain of the view for the reasons I've already given that Mrs T, on the balance of probabilities, knew, or ought to have known, of St. James's Place's restricted advice status.

other matters

Mrs T says that St. James's Place failed to write any follow up letters detailing its advice and recommendations between December 2014 and June 2016 something that it could and should have done. But in my view this doesn't prevent me from being able to make a finding on whether what was recommended was or wasn't suitable. I think it's also worth pointing out that none of the advice that was given by St. James's Place is in dispute.

in summary

As I've already noted, I've considered what both parties have said and submitted in this case - in particular Mrs T's substantial response to my provisional decision – very carefully. However, having done so (and for the reasons given) I see no reason to depart from my provisional decision and I now confirm it as final.

my final decision

My final decision is that St. James's Place Wealth Management Plc must, to the extent it hasn't already done so, pay Mrs F:

- £500 for the delay in transferring Mr F's ISA to her and for sending Mrs S an erroneous letter in October 2017
- £620 for the EPA/LPA issue
- interest on the above sum of £620 at 8% simple per annum from the date of the last payment to the date of settlement*
- £500 for the distress and inconvenience this whole matter has caused

*HMRC requires St. James's Place Wealth Management Plc to take off tax from this interest. If Mrs F asks for a certificate showing how much tax has been taken off this should be provided.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T, Mr F (junior) and Mrs S (as attorneys for Mrs F) and Mrs T and Mr F (junior) (as executors for Mr F) to accept or reject my decision before 19 November 2020.

Peter Cook
ombudsman