

## **The complaint**

Mr F has complained that as a result of inaction by St James's Place Wealth Management Plc ('SJP') he has incurred an unnecessary tax liability.

## **What happened**

Mr F's parents were the lives assured of an investment bond they purchased in 2005. Mr F's father died in 2010 and in 2014 the ownership of the bond was passed to Mr F and his brother via Deeds of Assignment. Mr F's brother passed his portion of the investment bond to his wife and encashed his share.

When Mr F's mother died in 2021 the investment bond was disinvested as she was the last of the lives assured. As a result of that Mr F has incurred a tax liability which Mr F says SJP should have advised him of.

Mr F complained to SJP who didn't uphold his complaint. It said;

- It provided the background to the investment bond and Mr F being involved in the process in 2014 when the family was advised of the most tax efficient way to access capital from the bond.
- After the previous adviser left SJP the new adviser had some phone meetings with Mr F but couldn't conduct a full review despite the adviser's requests.
- Because Mr F hadn't had a full financial review prior to his mother's death in 2021 the risk of the Investment Bond ceasing on his mother's death hadn't been discussed with him and possible solution suggested.
- The previous adviser at SJP could have discussed this with Mr F. He remained the plan owner with his mother as life assured. Mr F had received a payment of £68,981.49 in September 2021.
- It was only possible to provide the correct level of advice if Mr F had fully engaged with SJP. Mr F had declined to meet and discuss any ongoing needs. Without SJP being fully aware of Mr F's circumstances it couldn't advise adequately. It wouldn't have been right for recommendations to have been made without being in possession of all the relevant information.

Mr F did agree and wrote back to SJP. SJP reiterated its position and remaining unhappy with the outcome, Mr F brought his complaint to the Financial Ombudsman Service.

Our investigator who considered Mr F's complaint didn't think it should be upheld. She said;

- She had seen the email sent to Mr F in 2012 – in his role as executor of his late father's estate – which showed the tax implications if the policy was cashed in for both a higher and basic rate taxpayer. Further advice had been given in 2014 about the advantages of assigning the policy to a basic rate taxpayer. She couldn't agree that Mr F wasn't aware that if he wasn't a basic tax player then a tax liability would be incurred.

- SJP had contacted Mr F by phone and follow up letters regarding a confidential financial review but Mr F never agreed to these. A review could have established Mr F's financial circumstances. SJP wasn't aware of Mr F's tax status.
- It wasn't known what of SJP's services Mr F subscribed to. But even if that was a full advisory service, SJP couldn't have properly assessed his financial circumstances without a full review. Overall, she didn't consider that SJP had made an error regarding any tax liability for the investment bond.

Mr F didn't agree with the investigator and asked for his complaint to be reviewed by an ombudsman, so it has been passed to me for a decision. Mr F provided a further submission for my consideration. In summary he said;

- SJP failed to advise him of the risk of the bond's dependence on his mother's position as the life assured despite her advancing years.
- That the death of his mother would trigger encashment of the bond and the tax implications for him. If he had known, he would have acted. It should have been explained to him.
- He relied on SJP. He had no understanding of the bond or prior knowledge.
- SJP had been able to provide good advice in the case of his brother and it should have reminded or reiterated the tax implications for him because of his mother's death.
- He provided all information that was requested, and, in any event, no special knowledge of his affairs was necessary to identify the risk and consequences.

Mr F updated us about his tax liability further to his complaint being brought to this service. He has said that for the 2021/22 tax year he received confirmation from HMRC that his tax liability was £10,005.

### **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.

After doing so, I have reached the same conclusion as the investigator and broadly for the same reasons. I will explain why.

In Mr F's complaint letter to SJP he said that SJP had failed to properly manage his investment and give him appropriate advice. The two key issues he referred to were the bond's vulnerability to Mr F's mother being the life assured and the potential tax liability as a result of an involuntary encashment of the bond upon his mother's death if he was a higher rate tax payer.

Mr F has said that if he had been aware of the involuntary encashment and the subsequent tax liability to him as a higher rate tax payer, then he would have changed the status of the bond or assigned it to someone else – I assume a basic rate tax payer. SJP has told us it wouldn't have been possible to add any other lives assured, so by simply assigning it would have resulted in it being surrendered on the death of Mr F's mother in any event.

However, I don't think it's unreasonable to assume that a life assurance bond such as this one comes to an end upon the death of the life assured. The very reason for having the product has come to an end.

But I have gone on to consider what SJP's obligations were to Mr F. Mr F became a client after his father's bond was split and Mr F retained his share. As the bond itself was a contract started prior to the Retail Distribution Review, which was launched by the Financial Conduct Authority in 2006, there was no on-going adviser charge. Because of that there was no responsibility on SJP to offer reviews. But I see that Mr F was provided with those review offers but turned them down.

I understand that when the bond was assigned to Mr F in 2014, he was invited to review meetings, but he declined. I've seen a copy of SJP's Financial Review document for Mr F and under the 'Client meeting notes' section of the document reference is made of the contact had with Mr F. There is record of an initial call in December 2018 with SJP's new representative during which it confirmed that Mr F helped with his mother's finances and that Mr F had his own independent financial adviser. This suggests to me that the focus of the relationship Mr F had with SJP centred around his mother's investment. Further calls were had in July of the following three years.

The adviser's notes of the call made in 2019 say 'I have expressed the need to meet and I'm happy to see them both at home'. In 2020 he said, 'I have expressed a face to face review would be preferable next time'. In 2021 Mr F's mother had recently died and the review was postponed. I think it's clear from those notes that SJP did offer to meet with Mr F albeit in the knowledge that Mr F had his own financial adviser in any event and there would have been the potential for it to give advice if it was needed,.

Mr F has said that a face to face meeting wasn't needed in order for SJP to obtain sufficient information about him in order for it to advise of the impact on the investment bond upon the death of his mother. And I agree that could have been the case. But SJP wasn't to know that Mr F could require such advice unless it was made aware of that need. The information in the fact find that SJP held for Mr F is limited to his name and address and the ownership of the investment bond. His tax rate isn't recorded and SJP wasn't in the position to know Mr F's other financial circumstances or how he would be affected unless he engaged with it.

While SJP may not have had a responsibility to offer reviews, it's clear that advice was given over the years to family members. And that included the tax advice given to Mr F's brother in 2014 regarding the reassignment of his share of the bond – for tax purposes and encashment. And I understand the Mr F was party to those discussions so was aware some tax issues did arise with the bond upon encashment. And it's clear that Mr F was aware that his mother was the sole life assured on the bond and as I have said above, I don't think it's an unreasonable assumption to make that a life assurance bond contract would come to an end upon the death of the life assured.

I think it more likely that if Mr F had engaged with SJP or accepted its offers of meeting, then Mr F's financial circumstances would have been understood and any tax implications of the bond could have been revisited or explored. And particularly as Mr F has explained that as he wasn't the original purchaser of the bond nor is he a financial expert with an understanding of the characteristics of the bond, then in his role as executor and beneficiary of the estate I don't think it would have been unreasonable for him to seek advice on this. Whether that be from his own financial adviser or SJP.

I've considered in more detail whether Mr F was aware of the implications of his mother being the only life assured. SJP has told us that he was present at a meeting it had with his mother where it was discussed about consolidating three of her own bonds after the death of Mr F's father in August 2010. The consolidation didn't go ahead but I note that on page eight of the suitability report provided states under the heading of 'Ownership';

'You [Mr F's mother] will own the investment. The lives assured on your investment will be [Mr F and one other] so in the event of your death the Bond will continue.'

SJP has also provided us with the key features document which was given at the time and I see there is a section entitled 'What happens if the life assured dies' and provides that information. So even though that advice was directed at Mr F's mother and related to the bonds she held, I think it's clear that the implications of being a life assured of an investment bond was discussed and Mr F was party to those discussions.

I also note that in correspondence from September 2012 about the distribution of Mr F's late father's estate details of the value etc of the investment bond was given as well as details about the total value for tax purposes and the tax position if the trustees were to dispose of it or if both a basic rate and higher rate tax payer were to dispose of it. That is followed by the comment;

'When one or more people encash a policy the top slice is added, proportion, to their taxable income to see if they then fall into the Higher or Additional rate tax bracket. If two or more beneficiaries wish to continue the investment, I would look at their respective tax positions to see if it would be advantageous to split the investment into two new plans or continue the existing plan as a joint investment.'

And on 6 March 2014 SJP's representative responded to a query from Mr F about the assignment of the policy to the beneficiaries of the estate and once that had been done 'the executors job is complete and we can take instructions from the owners on their policies after reviewing the tax position again'.

While these don't explicitly discuss what would happen to the policy in the event of Mr F's mother's death, I think it was made clear that the investment bond does have special characteristics when it came to the tax position. And if Mr F had engaged with SJP further, then the above make clear his own tax position would have been considered and advice could have been given on that basis with the potential of further advice upon the involuntary encashment of the bond.

And the adviser in 2014 has said that upon the death of Mr F's father the effect of just having Mr F's mother as the remaining life assured was made clear to Mr F in their last meeting in 2014. But it might be that Mr F doesn't recall this as I appreciate this was nearly ten years ago.

Mr F has said there was plenty of opportunity for SJP to provide him with the advice he would have needed to avoid the tax liability he has incurred. But taking all of the above into account, I think the tax liability Mr F has told us he has incurred was his own responsibility. Mr F had his own financial adviser and SJP simply wasn't in the position to give him advice without knowing more about his circumstances. And I don't think it would have been right for SJP to give advice without it being more aware of Mr F's financial position.

Mr F's relationship with SJP seems to have mainly been focused on his mother's assets and his brother's share of the bond, and SJP wasn't obliged to provide Mr F with ongoing advice in any event. And Mr F chose not to engage with SJP despite its invitations to do so. But I think the dealings he had with SJP about his late mother's investment and his brother's share of the bond should have highlighted the importance to him of seeking the necessary investment advice which would have included his own tax position.

Mr F has said that as he wasn't the original purchaser of the bond and wasn't a financial expert then his knowledge about the bond couldn't be assumed. I accept the point Mr F is making here but by him being aware of his limited financial knowledge, I think it should have

prompted him to engage with SJP when it offered or seek alternative advice from his own financial adviser.

Taking all of the above into account, overall, I don't find that SJP is responsible for the tax liability Mr F has incurred.

Undoubtedly Mr F will be disappointed with the outcome to his complaint. It's clear he feels very strong about it and I thank him for the efforts he has made in bringing the complaint. I hope I have been able to explain how and why I have reached this decision outcome.

### **My final decision**

For the reasons given, I don't uphold Mr F's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 25 August 2023.

Catherine Langley  
**Ombudsman**