

## The complaint

Ms W (the Administrator of the late Mr P's estate) has complained to St. James's Place Wealth Management Plc ("SJP") about advice given to Mr P regarding his personal pension and several investment bonds he held. Ms W says the advice fell below the standard Mr P was entitled to and as such, his estate has had to pay additional tax which could have been avoided.

## What happened

Prior to his death in 2020, Mr P had been a client of The Platt Partnership Ltd – an appointed representative of SJP – for many years. As the principal firm, SJP has overall responsibility for the advice provided to Mr P. So for ease, I'll refer to all actions as having been carried out by SJP.

Mr P held a personal pension with a provider I'll refer to as Firm R. He also held several investment bonds, some of which had been held jointly with his wife. Mr P's wife passed away in 2014.

The crux of Ms W's complaint to SJP related to a trust fund that SJP advised Mr P to establish to mitigate any future Inheritance Tax (IHT) liability. But despite steps being taken to set this up, including Ms W's daughter completing trustee forms, the trust wasn't established. Ms W says Mr P wasn't aware this hadn't happened.

Ms W also thinks SJP should have advised Mr P of the tax implications if he didn't move his Firm R personal pension to drawdown before the age of 75. As a result of the personal pension not being moved before Mr P's 75<sup>th</sup> birthday, his estate has had to pay additional income tax that otherwise wouldn't have been payable. In addition, Ms W also complained that Mr P wasn't given suitable advice after his wife passed away regarding the bonds they had held jointly. However, Ms W is no longer pursuing this particular aspect of the complaint. SJP considered Ms W's complaint but it didn't think it had done anything wrong. Ms W didn't agree with the outcome SJP had reached so she referred the matter to this service for an independent review.

One of our investigators reviewed matters but didn't think SJP needed to take any action. In summary, the investigator said that:

- In terms of Firm R's pension not being transferred, the SJP plan had higher charges and offered less funds than Mr P's existing arrangement. Mr P would've also incurred an exit charge on transferring away from Firm R. And SJP had also said it generally wouldn't discuss possible tax implications for beneficiaries because Mr P didn't have any children.

SJP provided a restricted advice service to Mr P in regard to his Firm R pension. The investigator had checked the key facts document which would've been provided to Mr P and he was satisfied that the advice restrictions were made clear to him. Therefore, the investigator didn't think that SJP had a responsibility, or authority, to provide comprehensive advice about Mr P's Firm R pension, as it wasn't an

Independent Financial Advisor (IFA) to Mr P. To carry out an advice process about Mr P's Firm R Pension, SJP would've needed Mr P to complete letters of authority to obtain information about his Firm R plan, so that it could discuss the merits of transferring in subsequent review meetings.

As SJP hadn't provided clear evidence and notes of the process it carried out in 2010, 2016 and 2020, the investigator had considered the likelihood of its testimony that Mr P didn't want to pursue any advice about it. On balance, the investigator thought SJP's testimony was reasonable, as he couldn't see a clear and immediate reason why Mr P would have wanted to avoid tax implications when he would have had to pay an additional charge.

The investigator said that after the age of 75 Mr P would not have lost access to tax free cash due to his current lifetime allowance stance. SJP had said that Mr P was very happy with the life he had and didn't appear to be driven by money or returns, which is why he was happy to split funds between cash, SJP and Firm R.

Based on this information, the investigator couldn't see a clear reason that Mr P would have wanted to transfer, as he didn't have any direct dependents. Moreover, SJP weren't obliged to carry out this advice. If Mr P was happy with the arrangement he had, the investigator said that he wouldn't have expected an advisor with restricted advice to recommend Mr P take action to avoid inheritance tax, if he wasn't looking for it, particularly if he had no children or surviving spouse. The investigator also explained that as tax advice is very specialist, he wouldn't expect to see a restricted advisor going in to detail about this, particularly in regard to a pension product which they don't have authorisation to provide comprehensive advice about.

Overall, the investigator thought SJP had provided a reasonable explanation as to why Mr P didn't transfer his pension, and it wasn't authorised to carry out the advice, unless Mr P wanted to pursue it.

- In terms of the Trust not being set up the investigator thought that although SJP had the necessary paperwork to put arrangements in place, it was likely that Mr P had decided not to proceed with the arrangement.

SJP had said it could understand why Mr P may not have wanted to proceed with inheritance tax planning and restricting access to growth on his investments, which is what would have happened if he had subsequently reinvested the proceeds into a Loan Plan. And although SJP didn't have any clear evidence of the instruction not to proceed, as it was confirmed verbally by Mr P, the investigator thought this was most likely to have happened.

The investigator thought it would have been clear from Mr P's statements that the agreement hadn't gone through and that his investment bonds had remained in place. The investigator accepted that SJP should've kept notes and information to back up the process that took place. However, based on the information available, the investigator thought SJP's testimony was likely accurate.

The investigator acknowledged that Mr P's family thought a trust was being set up and a declaration had been signed. But he felt Mr P would've raised the issue previously as he would've noticed the trust hadn't been set up. Therefore, he thought it was highly likely Mr P decided not to go through with the agreement.

The investigator also explained that he wouldn't have expected SJP to have contacted Ms W's daughter about this directly.

Ms W didn't accept the investigators findings. She provided the following comments:

- It is beyond dissatisfactory that SJP have no notes of the discussions which it says took between SJP and Mr P. These discussions had serious implications in terms of the financial planning it was advising Mr P on and was therefore within the scope of its retainer.

Ms W doesn't accept that SJP will be able to remember, in some cases over 6 years after the event, what was said in telephone conversations of which there is absolutely no record. There is no record of the telephone call let alone what was said. It appears SJP's version of events is somewhat different to the contemporaneous documentation and Ms W's understanding from discussions with Mr P.

There was no follow up correspondence from SJP when Mr P decided not to follow its advice. This, in itself is bad practice. Had there been correspondence or even contemporaneous notes of telephone calls/meetings then the position would have been clear to both sides.

There is nothing within the information Ms W has seen which limits the scope of the financial advice. Quite the contrary, correspondence indicates SJP were actively advising on both the pension and Mr P's IHT position. The correspondence also talks of addressing these issues on a regular basis and yet this does not appear to have happened. There is little correspondence after 2016 and it appears Mr P just fell off SJP's radar.

In terms of the pension, SJP says it is not an IFA but it had been obtaining information from Firm R on the pension in the run up to Mr P's 75th birthday and in fact had some contact with Firm R after his death. SJP was actively advising on Mr P's pension position in both 2010, 2016. And information was provided by Firm R to SJP in 2020 but there is no correspondence with Mr P regarding what was or was not agreed.

Whilst there may have been an issue around charges, there is no logical explanation as to why SJP had not advised Mr P of the implication of not making a change to the fund before 75. SJP say Mr P wanted to allow the funds a chance to recover. However, the increase in value of the fund would have increased the exit penalty as it was based on fund value.

Further SJP could have advised him of the tax implications when advising him about the potential to transfer the fund to SJP. The higher management charges, pale into insignificance in comparison to the tax charge which even as a restricted advisor it would have known would have applied. This is not specialist advice but basic financial information which Ms W would have expected any financial advisor to be aware of given the implications on a pension of anyone turning 75.

SJP say the reason why the pension was not moved in 2020 was again because of the withdrawal charges and yet these were substantially less in 2020 than they were in the earlier years. Earlier years the penalty had been circa £14-15k. But by 2020 it was 1% of the fund so £2-3k. If SJP are correct that Mr P was concerned about a small amount of £2-3k why would he not have been concerned about the potential loss of 100k. SJP was also aware that the selected retirement age was 75 as it had emails confirming projections could not be given beyond this date. SJP say it was only able to discuss the merits/benefits versus the disadvantages of transferring the fund to SJP. Why did it not then point out (in writing) the significant disadvantage of an income tax charge being payable if Mr P died post age 75 when he was

approaching his 75th birthday and it had actively been obtaining information on his pension.

The argument that Mr P did not have any spouse or children seems irrelevant. He was being advised on IHT planning back to 2016 by SJP and its letter in 2016 specifically states this is what he wanted to discuss with them. In any event it was not IHT but income tax that was payable.

- In terms of the IHT planning and trust issue, Ms W agrees that approximately 50% of the money that was earmarked to be transferred into the trust was not transferred by Mr P.

However, SJP already held 50% of the fund in bonds and it says that it would have been obvious to Mr P that the trust had not been established. Again SJP has no paperwork to confirm any instructions from Mr P to cancel this despite having paperwork to establish it. Again, SJP relies on memory of events that happened over 6 years ago when there are no notes at all to establish this. Given that the money of which SJP had 50% was to be invested in bonds, it is unclear how Mr P would have known that the money held by SJP had not gone into the trust. The money was in bonds. There is no further paperwork beyond regular statements to say what has happened. How would an ordinary elderly client have known from the paperwork that the bonds referred to were not for the trust? Again, the point raised that Mr P does not have any direct beneficiaries appears irrelevant against a background of someone taking IHT planning advice. In Ms W's view the practice of SJP should be considered bad practice, at best and it should be advised by the Financial Ombudsman to tidy up its practices, in particular in terms of correspondence to clients and notes of meetings/conversations. It should also be actively making clear in all correspondence what it is unable to advise upon and that a client needs to seek independent financial advice.

SJP also provided further comments. It said:

- Mr P's death was unexpected, and SJP would not have promoted the client take funds out of his pension that he did not want or need prior to this. SJP's main objective was advising Mr P to ensure his needs were met during his lifetime, although there were limitations in providing advice on the Firm R pension as it was not one of SJP's products.

The complaint has been passed 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'm in agreement with the outcome our investigator reached so I'm not upholding the complaint. I'll explain why.

In deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Ms W and SJP. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

I've firstly thought about the service SJP was providing to Mr P and whether he understood that it was not an IFA and was instead only able to provide advice in a limited capacity. The only documentation I have to base my decision on is the "key facts about our services and costs". In terms of investment advice, the box for restricted advice is ticked. And both the ISA and the trust recommendation letters from 2016 say that this document was discussed at the meeting and a copy was left with Mr P. So I can only conclude from this that Mr P was aware that SJP weren't able to provide advice on products from the whole of the market; its advice was restricted to advising on the merits of its own products.

This could include the merits of transferring another provider's plan to SJP. And certainly in terms of the IHT advice SJP provided, it was able to consider all assets Mr P had. But in providing a recommendation, it was only able to recommend an investment or trust that SJP provided.

I know Ms W has concerns that Mr P fell off SJP's radar after the advice in 2016. But I don't agree SJP was required to provide any subsequent or ongoing advice, certainly not in terms of the IHT planning, the trust or the pension. I say this because although the recommendation letter for the trust says that SJP will provide regular reviews, this was on the basis that the recommendation went ahead. However, that wasn't the case with the trust as it was never established. And, as set out in the key facts document, the cost of the ongoing advice would have been built into the charges on the investments within the trust.

I think Mr P would have known that SJP wasn't required to provide ongoing advice because he wasn't paying a separate fee for this.

#### Concerns about the trust not being established

Unfortunately, there is very little evidence documenting what happened after the initial discussions with Mr P about the trust. So I have to base my decision on what I think is most likely to have happened.

I think it's evident that in 2016 Mr P received advice about reducing his IHT liability. And it appears he initially wanted to proceed with SJP's recommendation to establish the trust. The recommendation letter dated 30 June 2016 states that Mr P had accepted the adviser's recommendation for the trust and that the applications had been submitted. And, Ms W's daughter was clearly sent forms to complete as one of the trustees. So, it certainly appears the process had started for the trust to be set up. However, SJP says that it had a later discussion with Mr P where he said he no longer wanted to go ahead with the arrangement. It said this was because one of the investments which been arranged by an IFA had an exit penalty. So Mr P decided not to proceed.

I acknowledge Ms W's comments that it's unlikely SJP would remember a discussion it had with Mr P, so many years after it was due to have taken place. And I can confirm that while I have taken account of SJP's testimony here, I've placed more weight on what else happened, or didn't happen, in order to determine what I think is the most likely reason for the trust not existing. In other words, do I think it likely that Mr P changed his mind about proceeding with the trust after initially agreeing to it, or, did something go wrong in the process of it being set up and as a result the trust wasn't ever established as it should have been.

I agree with our investigator that Mr P would have received annual statements for his investments from 2016 onwards. And it's likely he would have realised from these that the investments hadn't been transferred over to the trust with SJP. I also agree that its likely Mr P would've raised the issue previously had it he thought the trust was going ahead.

The recommendation letter also confirmed that the applications had been forwarded for processing and that Mr P would receive confirmation of the new investments shortly. The letter also explained that *"The Loan Plan involves you, within the trust deed, agreeing to pay £10 to the trustees within 28 days of a written demand from them. This establishes the trust. Once the trust is established, a further amount is loaned to the trustee. This amount is then invested into the loan bond"*

So, had Mr P thought the arrangement was proceeding, I think he would have queried not receiving confirmation of the new investments and not having made a payment for the trust to be established.

I appreciate Ms W says that this doesn't reflect conversations she had with Mr P. She also doesn't think it would have been clear to Mr P that the the money already held by SJP in bonds had not gone into the trust; she doesn't think this would have been apparent from the statements.

While I accept it may not have been clear from the SJP statements, the recommendation was for a number of other investments held with other providers to be transferred. There were 5 additional investments held with three separate providers. So I think receiving statements on these plans after 2016, would likely have made Mr P aware that the trust had not gone ahead. And if that was contrary to what he thought was happening, I think it's likely he would have raised this with SJP.

I acknowledge that Ms W's daughter signed the trustee form. But there is no evidence anything further was done to set the trust up. As I've said above, Mr P didn't pay the £10 required to do so. And the recommendation letter also explained that *"The plan involves an initial gift of £10 to establish the trust. You then make an interest free loan to the trustees of an amount equal to the balance of your investment, and the Trustees invest these monies into an investment bond, taking regular withdrawals or capital lump sums to repay the loan to you over time"*. After the initial forms were signed, I think it most likely that Mr P made a decision not to proceed with the new arrangement. This may well have been for the reasons SJP has cited to do with the exit penalty on one of the investments, added to the fact that at that time, Mr P didn't have an IHT liability as he hadn't met the threshold. Whatever the reason was, I'm satisfied that Mr P decided not to proceed rather than SJP making an error and failing to set the arrangement up.

I know Ms W thinks that this service should punish SJP for failing to adequately document the conversations it had with Mr P. However, it's not the role of this service to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead this service looks to resolve individual complaints between a consumer - or their representative - and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer (or in the case the estate), as far as is possible, in the position they would have been if the problem hadn't occurred. So while I acknowledge the frustration caused by the lack of records, I'm satisfied from what I have seen that it was Mr P's decision not to proceed with the trust arrangement.

#### Concerns about the pension advice

Mr P asked SJP to look into the possibility of him transferring his Firm R pension to SJP a number of times. Initially this was considered in 2010 and the again in 2016. On both occasions Mr P decided not to receive full advice on this matter due to the exit charges that applied for the Firm R pension.

In early 2020, when Mr P was approaching his 75<sup>th</sup> birthday, he asked SJP to look into the possibility of him transferring his pension again. SJP requested information from Firm R but an exit penalty still existed so SJP says that Mr P decided to wait. In June 2020, SJP requested information from Firm R again. SJP has said that by this time the exit penalty had reduced but so too had the fund value. Mr P again decided not to take any action so SJP did not provide full advice on this matter.

I know Ms W doesn't think Mr P would have been concerned about the exit charge and lower fund value when compared to the potential loss of £100,000 in income tax that his beneficiaries have had to pay. However, because Mr P had already decided he didn't want to go ahead, I wouldn't have expected SJP to have provided a full recommendation report in circumstances where the client has already decided that they don't want to take a particular course of action. And even if they had, there are a number of reasons why I wouldn't have deemed it suitable advice to recommend Mr P transfer the Firm R pension to SJP.

I say this because the SJP drawdown plan had less fund choices and higher charges than Mr P's existing arrangement - which also had a drawdown option. Added to this – as set out in the key facts document - there would likely have been an additional fee of 4.5% of the funds invested and potentially an additional fee for the drawdown arrangement. In addition, at that time Mr P doesn't appear to have had a need for any income and didn't require access to his fund. And although Mr P had started to think about ways to reduce his IHT liability a few years before, as I've said above, I'm satisfied that he made a decision not to proceed with the recommendation at that time. This suggests to me that the tax position of his beneficiaries after his death was not his main priority. And the implications on Mr P personally of not taking action before he turned 75 were minimal, particularly as he was still entitled to tax free cash because he hadn't exceeded his lifetime allowance. So overall, if SJP had provided full advice to Mr P on the pension - which it didn't do as that's not what Mr P wanted - I wouldn't have expected it to recommend the transfer as it wouldn't necessarily have been in Mr P's best interest. And I wouldn't have expected SJP to have provided a recommendation to Mr P to transfer based on the death benefits alone.

I've also thought about whether SJP was required to provide any other information to Mr P about his pension with Firm R and the consequences of not accessing it before his 75<sup>th</sup> birthday.

SJP couldn't advise Mr P on the merits of taking his pension through Firm R as it was only able to advise on SJP products. However, I do think it could provide general information on the changes to pensions after age 75. There is no information to suggest it did this, although I do appreciate this could have been discussed but not recorded during one of the meetings Mr P had with SJP. Having said this, SJP didn't provide Mr P with full pensions advice and so I don't think it was obliged to do this.

I know the consequences of Mr P not accessing his pension benefits before his 75<sup>th</sup> birthday, have led to his beneficiaries having to pay income tax. This wouldn't have been the case if Mr P had already accessed his Firm R pension. But for the reasons explained, I don't think SJP is responsible for this action having not been taken. And, although I accept that it may have been good customer service for SJP to have made Mr P aware of these changes, I don't think it was required to do this.

For the reasons set out above, I'm not upholding this complaint and I don't require SJP to take any further action. I know this will come as a disappointment to Ms W and I do appreciate the lack of information regarding SJP's conversations with Mr P will have been frustrating. But as I've said above, it's not the role of this service to punish businesses.

**My final decision**

Having considered all the evidence provided and reflecting on what is most likely to have happened in the circumstances, I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr P to accept or reject my decision before 28 July 2023.

Lorna Goulding

**Ombudsman**