

The complaint

Ms M complains that St. James's Place Wealth Management Plc ("SJP") failed to determine that she held US citizenship when providing her with investment advice. As a result, she's incurred unnecessary liabilities and been caused distress and inconvenience.

What happened

Ms M has been a customer of SJP since 2005 and over the course of the relationship since then she's been recommended a series of different investment products – an ISA, unit trust, an investment bond, among other things.

In 2020, when, as a separate matter, she was dealing with the administration of estate of her late father, she completed a form that asked whether she was a "US person". As she has joint UK/US citizenship she answered yes. It was this that led to her becoming aware of her liability to pay tax in the US.

Following this, Ms M complained to SJP as she felt it should've actively determined her citizenship status while advising her over the previous 15 years. She felt that if it had done so, she would've been prompted to act sooner and been able to manage the situation more effectively.

SJP didn't uphold the complaint. It noted that at the outset of its relationship with Ms M she had confirmed that she was a UK resident, had always lived in the UK and was UK domiciled. This information had then been confirmed at regular points during the relationship when various recommendations had been made to her. SJP said the adviser who generally worked with Ms M had not been aware of any link to the US. As such, it didn't feel it was responsible for any liability that Ms M might incur as a result of not addressing the matter of her US citizenship sooner.

Ms M said that it had always been a requirement that SJP ask the question. SJP acknowledged that the US Foreign Account Tax Compliance Act (FATCA) and the Organisation for Economic Development (OECD) Common Reporting Standard (CRS) required businesses to collect information about customers' tax residency. But it said that while it had made some changes to its forms over the years to make them clearer in this respect, they had never been incorrect at any point. The amendments had been an exercise in improving the process to help make it clearer to customers, rather than a response to or requirement of regulatory change.

Although SJP didn't uphold the complaint, it did offer Ms M £250 by way of an apology for its delay in dealing with the matter, which Ms M accepted.

Ms M referred the complaint to this service, but our investigator reached broadly the same conclusion as SJP. She felt Ms M ought reasonably to have disclosed her joint citizenship when responding to various questions about residency, domicile and tax as part of the ongoing advice process. The investigator also noted that, following a change in FACTA requirements in 2014, SJP had in fact been required to update its forms and seek self-certification from its customers. This had involved Ms M completing a form in December

2016 which had specifically asked if she was a US citizen, but she had still not disclosed the information.

Ms M didn't accept the investigator's view. She said that SJP's early compliance checks had failed to ask the right questions and had been misleading such that she hadn't been prompted to think about her US citizenship. She felt that if the questions had been presented differently, in a clearer format, they would've drawn attention to the fact that other information may have been required.

However, she accepted she should've completed the amended 2016 self-certification form differently, as it was clearer, so she suggested a compromise for redress based upon her having denounced her US citizenship in 2016 and acting at that point to address any liabilities.

The investigator wasn't persuaded to change her opinion, so that matter's been referred to me to review.

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.

I can appreciate why Ms M didn't recognise the potential tax implications of holding joint citizenship. She had lived in the UK her entire life and clearly thought of herself as a UK citizen. But ultimately, it was her responsibility to be aware of her citizenship status and take any necessary steps to ensure she was meeting all necessary related obligations.

As a UK-based business providing investment advice to primarily UK-based clients I can see why the documentation Ms M completed at the outset with SJP, and subsequently until the required changes in 2014, didn't actively seek information about potential US or other citizenships.

I note Ms M says that she did discuss her connections to the US with her adviser and that these discussions should've prompted the adviser to act. But without more evidence as to the nature of this kind of interaction, I don't think I can reasonably conclude that SJP should've done more. Discussions of visits to the US or of family being based there could perhaps have prompted the adviser to ask more questions, but I don't think it was the case that there was a requirement that the adviser should delve more deeply. I think SJP was entitled to rely upon the information provided to it by Ms M in the relevant documentation.

It seems that there was a point at which SJP was *required* to be more pro-active in seeking information from customers, when FACTA made changes in 2014. The SJP self-certification form issued after this point, which Ms M completed in 2016, was much more explicit in its questioning about US citizenship. Unfortunately, even with this increased clarity Ms M didn't document her US citizenship.

While I can completely understand how this oversight occurred – Ms M simply saw herself as a UK citizen due to her lifelong residency – it does suggest that even if SJP's questions had been made clearer sooner (although, as I say, there was no particular requirement that the questions were clearer) then Ms M may well have still overlooked noting her US citizenship.

In summary, although sympathetic to Ms M's situation, particularly with the matter having come to light at such a difficult time, I find I'm unable to conclude that SJP acted incorrectly or unfairly.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 20 October 2023.

James Harris
Ombudsman