DRN-4488797

The complaint

The estates of Mr and Mrs B complain St James's Place Wealth Management Plc ("SJP") gave unsuitable advice and failed to give suitable advice to Mr and Mrs B. They say the result was the estates suffered income tax and inheritance tax they wouldn't otherwise have suffered and in particular due to investments SJP advised them to make into offshore and onshore investment bonds. They also complain of investment loss suffered when those investment bonds were automatically cashed-in on death rather that continuing to run.

Background

The complaint is brought by executors of the estates. I set out the complaint background in my provisional decision of 26 October 2023 in the following terms:

> Mrs B passed away in September 2018 and income tax of around £55,000 became due on her investments. Mr B passed away in 2020, too soon for gifts made since September 2018 to receive inheritance tax relief under rules that reduce that tax liability three years after the gift and remove it after seven. Mr B's estate suffered inheritance tax ("IHT") of around £260,000 of which roughly half was attributable to the bonds. Also investments were cashed in on his death when markets had fallen and would rise in future.
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> Mr B's estate also suffered income tax of around £60,000, The income tax on the bonds could've been lower had the calculation date not been just before the end of the tax year. At that point Mr B had received a full year's income from all his other income sources. His rents and pensions made full use of his income tax annual allowances and basic rate tax band. Income tax was suffered on the chargeable gain on the bonds at the higher or additional rate. In contrast, the same situation earlier in the tax year would've meant some income tax on gains on the bonds could've been covered by Mr B's tax allowances or basic rate tax band. That said, from the large sums invested and the large gains involved (relative to available reliefs), the gains would've been liable to at least basic rate tax regardless and possibly more.
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> Contradictory information has been given about Mr B's tax status but from what I've seen I expect he was a higher rate taxpayer in 1994 when the investments started and remained so or close to it throughout. I've been told that Mrs B was a basic rate taxpayer and that at some point before 2018 she became a non-taxpayer.
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> The executors complain in broad terms that over the course of a 30-year advisory relationship, SJP had sufficient time and opportunity to recommend Mr and Mrs B measures to avoid or significantly reduce the inheritance tax and income tax liabilities that arose – and also avoid investments being cashed in at that time. They say SJP recommended complex products that carried these avoidable risks. They say investment funds like unit trusts are simpler and without these drawbacks.
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> In addition to these broader concerns, the executors have raised particular concerns about some transactions. One is that advice to invest in offshore bonds in 1994 was unsuitable because onshore bonds had more favourable tax treatment from an income

tax point of view. A chargeable gain on an onshore bond that falls within the basic rate tax band suffers no income tax - the tax already paid within the onshore fund is deemed to satisfy that liability. This is not so for an offshore bond. Also the executors suggest the 20-year period for tax deferred withdrawals was insufficient and made a bond unsuitable given the ages of the investors in 1994. Also the failure to include other, younger, lives assured on the bonds meant the investments would be cashed in upon second death risking investment losses.

The executors also suggest the offshore bonds should've been revisited when an onshore bond was advised in 1998. They also suggest that in 2012, when SJP recommended a discounted gift trust for inheritance tax purposes (about which there is no complaint), existing arrangements ought to have been revisited to save on future income tax or inheritance tax. They say advice to top-up offshore bonds in 2014 wasn't suitable as onshore bonds were more favourably taxed at that point. They also say SJP again failed to carry out inheritance tax planning at that point and also for the period 2014 up to 2019 when the complaint began.

The contention is that existing arrangements ought to have been changed at some point to save on future income tax and inheritance tax liabilities. For example, that when Mrs B became a non-taxpayer or taxed at a lower rate than Mr B, this could have been used as a chance to restructure things to save on future income tax.

Our investigator didn't think the complaint should be upheld. She thought SJP's offer to cover legal costs and cover tax arising from withdrawals made on the bonds in error - and to make a goodwill payment of £750 for inconvenience – was fair and more than we could award. The executors didn't agree and so the matter has been passed to me to decide.

My provisional decision explained why, from what I'd seen so far, I didn't intend to uphold the complaint. I mentioned an offer SJP had made that covered certain other matters related to the complaint but that I'd not discussed as part of the complaint - because those issues did not appear to be in dispute when the matter came to us. But I was unable identify grounds to award compensation for the matters I had considered as part of this complaint.

I said I'd reconsider my provisional findings in light of any further points the executors or SJP had to offer. Neither the executors nor SJP have offered any further points.

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, and having had nothing new in reply to my provisional decision, I've arrived at the conclusions I reached in that decision for the same reasons. I've set these out below.

SJP recorded the 1994 bond investments' main purpose as being retirement planning. The idea was to take regular income from the bonds to fund spending in retirement. There was an option, not selected, to say the primary purpose was IHT planning.

In listing reasons why the 1994 bonds replaced existing policies, SJP's list included *"ability to facilitate inheritance tax strategies"* in some cases and, in all cases, it mentioned using a will trust. A will trust had an inheritance tax use in allowing a nil-rate band to be made used if this wouldn't otherwise have been fully used to pass property to someone other than a spouse.

The inheritance tax nil-rate band in 1994 was £150,000. This was the sum invested in bonds for Mr B and for Mrs B. This points to the inheritance tax nil-rate band being a consideration. But a trust also had an income tax use at the time, as at that time there was no income tax on bonds if surrendered in the year after the death of the settlor of a trust. This tax treatment changed in 1997 for chargeable events after April 1998. In any event this tax treatment wouldn't have prevented tax being deducted from the investment funds in the meantime for an onshore bond. But an offshore bond would likely be largely tax-free.

So there were good reasons and tax benefits to investing in an offshore bond at that time – and these were greater than for an onshore bond. Also even if Mr and Mrs B's ages made it likely that they would outlive the 20-year tax deferred period, I can't agree a 20-year tax deferred period wasn't of benefit or made SJP's advice to invest in the bonds unsuitable.

Offshore bonds typically incur higher charges than onshore bonds and 1997 changes to the taxation of life funds reduced but didn't remove the tax benefits compared to onshore funds. The result is that offshore funds would typically need to run for longer periods in order for the tax benefits to make up for higher charges. From 1994 and for ten years after that, the investment bonds taken out were expected to continue to run for the long term. So offshore bonds had a chance to outperform an onshore one.

The onshore bond investment in 1998 was made after the April 1998 tax change mentioned above – so the clear advantage an offshore bond had over an onshore one within the trust arrangements I've noted above, no longer applied. But the tax avoided within the offshore fund still provided the benefit of returns that rolled up free of tax. With an onshore bond, the proceeds would be free of basic rate tax, but this was not a tax break - rather it reflected tax already paid on returns within the onshore life fund. So the basic rate tax payable on the offshore bond proceeds needs to be considered in this context. I don't consider switching the offshore bond to an onshore one would've been justified at this point. In saying this I bear in mind the additional investment costs that would've arisen from cashing in an existing investment and reinvesting the proceeds into a new one.

The executors say Mr and Mrs B wouldn't have wanted their estates to suffer any large tax bills for inheritance or income tax – and I don't doubt that this is the case all other things being equal. They say avoiding inheritance tax was a consistent concern and priority of Mr and Mrs B. I agree but only to a certain extent.

It seems to me inheritance tax was considered and referred to in the advice given when investments were made, as it ought to have been given the potential for a liability of that kind to arise on the estate. But those references don't make me think it was always the main purpose of those investments. When it comes to the bonds the executors are complaining about, the advice given and the investment decisions made were, from what I've seen, not for the purpose of or mainly directed at reducing or managing a potential inheritance tax liability or income tax arising on their estates. The investments had other and overriding objectives – being, broadly, to generate income from investments, avoid the deduction of tax from that income and to secure that income by growing the underlying investments. The income may have been used in part for gifts.

I note that what is needed if inheritance tax is to be avoided is, generally and broadly, a willingness to give away wealth, or control of or rights to wealth during life – for example transfers between three and seven years before death or as normal expenditure out of income or within the annual exemption. In some instances this may require a willingness to become involved in setting up legal arrangements like trusts, such as will trusts or other discretionary trusts. The extent to which reducing potential inheritance tax was a priority for Mr and Mrs B, can in part be determined from the extent to which they were willing to gift or give up control of assets in pursuit of this objective.

On that basis I find that it wasn't the chief priority over the period. The objective in 1994 was mainly to secure income. This isn't to say Mr and Mrs B were unwilling to make provisions to manage or reduce inheritance tax. From what I've seen, in 1996 recommendations were prepared for Mr B to invest £21500 into a gift and loan trust that would place the growth outside his estate while retaining access to the capital. I note that this related only to the future growth. But at that time the adviser notes also recorded the existence of a whole of life policy with cover of £406,602 that it says was started in 1995 for inheritance tax purposes for a premium of £220 per month. There were also pension policies which, if not accessed, had potential at the time until age 75 to pass some wealth on while saving inheritance tax.

There was also a discounted gift trust started in 2012. This sort of trust can be set up when an investor is prepared to give up the capital and knows what income they are willing to limit themselves to. It appears those circumstances existed in 2012 but only as far as a sum of £94000 was concerned.

Notes which I believe relate to the 2012 advice, but appear on a 2014 fact find document, included the following: Mr B *"has recently sold a property and wishes to undertake some additional IHT planning now that he has more liquidity"*. Priorities at the time included inheritance tax and estate planning: *"To reduce the potential IHT liability that the Estate would currently face in the event of death"*. For this: *"From available capital £94000 could afford to be set aside."* And: *"Want to achieve the maximum impact on your current IHT liability as a result of this investment."* It also noted: *"Income is currently broadly meeting general expenditure with a degree of disposable income prefer to have some additional income to allow for additional expenditure/Gifts to Grandchildren."*

The notes refer to gifts of £35,000 as already having been given in May 2012. They also refer to a residual inheritance tax liability of £293,000 for Mr B and £170,898 for Mrs B.

So in my view the 2012 notes and advice suggest Mr and Mrs B had limited scope or willingness to gift more than the £94,000 they did at the time, in addition to the gifts and provision already made. Given that the gift at that time was from newly realised funds, this also suggests Mr and Mrs B didn't at an earlier point have this capital or other capital sums that they had wanted to give away for inheritance tax purposes – although it does seem to suggest that regular gifts from income were being made.

For example, at a 1998 review advice was given to invest in a PEP as well as an onshore bond. It was noted that will trusts were being drafted. Mr and Mrs B's priority was selected (from a list) as being investment planning as number one. No other priorities were marked. Inheritance tax planning and other tax planning were available options to select.

Similarly when a top up to the offshore bonds was recommended in 2014, the adviser's notes at that time said: *"They are using their annual gift allowances to children/grandchildren and have taken some steps to mitigate IHT which they feel is enough at the present time."* Also the 2014 advice letter said: *"You have a substantial IHT liability on your estate and… you do not wish to address this liability at the current time…"*

So I don't agree that inheritance tax mitigation of the kind to which the executors have referred, was always the chief objective of Mr and Mrs B over the period. The investments recommended did allow tax mitigating steps to be taken by Mr and Mrs B if they wished in future - such as gifting bonds by assignment - at a time they thought appropriate. Little use was made of those steps by Mr and Mrs B. In my view this doesn't mean SJP's advice was inappropriate, but it does reflect the extent to which Mr and Mrs B wished to put those sorts of measures into action.

In 2014 SJP's advice letter said bonds rather than unit trusts were recommended because

Mr B's capital gains tax allowance would be fully used up by the sale of properties. On this basis an onshore bond was expected to return more over a period of less than ten years than a unit trust investment. Also SJP said Mr B was a higher rate taxpayer who would be better off with an onshore rather than offshore bond over all investment terms. It explained its decision to recommend more be paid into the offshore bonds as follows:

"…I did not recommend an onshore Investment Bond to you on this occasion as it is your intention to assign clusters of this holding in multiple trusts for your grandchildren's benefit between the ages of 18 of (sic) 21. You want these funds to… potentially reduce or eliminate any debt that could be incurred as a result of higher education. In this situation, the International Investment Bond may be more tax efficient as your beneficiaries are taxed at a lower rate than you."

It also said: *"When the assignment to your beneficiaries takes place provided your grandchildren are non-taxpayers at that time which you believe they will be as they will be in full time education, he or she will be able to offset any unused personal allowance against the gain and take advantage of the 10% starting band at the point of encashment. The International Investment Bond is also advantageous as all income and capital is rolled up and no income is provided for tax purposes."*

These transfers did not take place. I don't have full details of Mr and Mrs D's assets and it may well be they made other gifts, payments or transfers of which I am not aware and that may explain why they did not later transfer parts of the bonds as originally envisaged.

This idea of passing the bonds to others was noted in 2014 only to explain why a payment was made into offshore rather than onshore bonds. If there had been no plan to perhaps gift bonds to others who were non-taxpayers, it appears the result would've been to take an onshore bond instead.

The 2014 letter also said: *"Furthermore, following assignment, provided your grandchildren remain non-taxpayers, our figures show that, for them, the projected returns of an International Investment Bond exceed those of the on-shore Investment Bond for investment terms of 10 years or more."* It seems to me that speculating as to the tax position of anyone in ten years' time is of limited value – and the idea of someone remaining a non-taxpayer for ten years doesn't seem plausible. So I don't think this point adds weight to the advice.

One reason for topping up the offshore bonds was Mr and Mrs B were familiar with them and happy with their performance – and this may have overridden some other considerations at the time. Notes from 2014 included: *"They… feel that they would like to top up the [offshore bond] that they have had for some time. They like the fact that it bears no tax whilst invested, they understand and appreciate [it]… as a means of generating income and feel that the additional income that a top up would give… is what they require. They have been very please[d] with the long term performance of their [bond] and feel [comfortable] with this type of investment."*

Familiarity and customer preferences are legitimate things to take into account. But these ought not unduly override financially material considerations. The ability for a non-taxpayer to receive an assignment of the bonds was a legitimate and material financial consideration in my view. The executors have questioned whether there were in fact grandchildren whose ages fitted in with the aims stated in the advice letter. I've thought about this, but it seems to me that Mr and Mrs B had knowledge of the ages and situations of their grandchildren – and were in a better position to know this than SJP. It appears that they were content with the account of their plans that SJP gave in its advice letter, and content to use the offshore bond on that basis. With this in mind I'm not persuaded I can find fault with that approach.

In my view it wasn't wrong or unusual at the start to have the bonds set with Mr and Mrs B as the lives assured. The forced encashment of the bond upon second death could mean a worse result than if the investment carried on, but a disadvantage wasn't bound to arise from this. I accept having the extra option of the bonds being able to continue for longer, would've been an advantage and carried no obvious disadvantages. But I don't think this means an arrangement that didn't offer that option was unsuitable.

In this regard I also note that the 2014 advice letter also said: *"Your International Investment Bond will be held with you as owner and the life assured. I recommended that younger lives assured are selected to avoid early encashment charge on death within 6 years. However, you declined this because you simply wish to make an additional investment to your existing Bond and do now wish to complicate the paperwork or discuss the position with your sons. And it is your intention to assign value to multiple trusts as described above."*

It seems to me that the question of adding further and younger lives to Mr and Mrs B's bonds was raised here but rejected by them despite the fact that a material financial disadvantage could arise as a result in the event of death.

With this and what I've already said above in mind, I'm not persuaded to find SJP at fault for not having added or having advised Mr and Mrs B to add younger lives to the bonds or for loss arising by virtue of the bonds being encashed in 2020 upon second death.

I've thought carefully about the question of rebasing the bonds and the possibility of reducing future income tax as a result. There may have been scope for some future tax savings to have been achieved by actions taken in the years immediately preceding 2018, based on Mrs B being a non-taxpayer. I note that there was also the option to benefit dependents by assigning policies and this isn't a course of action Mr and Mrs B chose to take.

The executors haven't specified any particular point where the advice should have been given and tax saved by a restructure of the bonds, or shown what scope there was to do this. I'm not persuaded that the scope for this was substantial or would've had the effect of substantially reducing the very large tax liabilities that had been built up as a result of very large sums of growth having been achieved on what were, to start off with, very large sums in the context of available income tax allowances.

It seems to me that reducing the potential future income tax liability in a significant way for the offshore bonds would've likely required triggering a chargeable event so basic rate tax could be accounted for. This would've been more than just a variation in how income was taken. It would've meant the surrender of bonds, with the net proceeds reinvested into fresh contracts no longer carrying untaxed gains. This action would have had immediate costs as it would mean a loss to tax and reinvestments costs compared to not taking action.

I've not seen evidence to show that the benefits of such action would've been substantial. So unless the overriding priority was to reduce tax on Mr and Mrs B's estates - or to reduce the total tax paid regardless of who paid it and when (so Mr and Mrs B would've chosen to suffer more tax or costs themselves if this were at a lower rate than might be incurred later by their estates) - I don't think SJP is at fault for not advising this course of action. From what I've seen, I don't consider that reducing the tax for their estates can be fairly characterised as being an overriding priority for Mr and Mrs B in this way over the period I've considered.

I accept that SJP had a role to play in making recommendations and giving advice in connection with these matters. But if Mr and Mrs B at a particular time did not wish to take steps immediately that might inconvenience or disadvantage themselves in the short term but might benefit their estates in the longer term, I don't see that SJP was responsible for making Mr and Mrs B take those steps or make those choices.

I note that after September 2018, the scope for tax mitigating measures to be successfully put into practice was limited given Mr B was the higher taxpayer. Mr B still had the option of assigning parts of the bond to relatives to whom he wished to give funds and who might pay income tax on the chargeable gains at a lower rate than Mr B. But gifts to avoid inheritance tax would no longer have succeeded, as noted already above.

On balance, and in light of all I've said above, I've decided not to uphold the complaint. If the executors of the estates wish to accept SJP's offer relating to certain other issues (outlined by SJP in April 2020 as tax on certain withdrawals made in error, up to £2000 for reasonable accountant costs to calculate this and for other calculations and £750 for trouble and upset experienced) they should approach SJP about this direct.

I've grateful to the parties for their submissions and for the engagement and assistance they have offered our investigation throughout.

My final decision

For the reasons I've given above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estates of Mr and Mrs B to accept or reject my decision before 5 January 2024.

Richard Sheridan
Ombudsman