

## **The complaint**

The estate of Miss W complain that St James's Place Wealth Management Plc (SJP) gave unsuitable advice to Miss W to invest into an estate planning service.

## **What happened**

In September 2016, Miss W received advice from SJP. Miss W was looking to preserve her assets for her family to inherit and was keen to reduce her inheritance tax liability. Miss W already held investments in an inheritance tax planning scheme. SJP advised Miss W to invest into three inheritance tax saving schemes with different providers, with £53,000 in each. The estate of Miss W complain about the recommendation to invest into one of schemes, namely, Oxford Capital Estate Planning Service (OCEPS), they maintain that Miss W was exposed to more risk than she wanted to take, the investment being highly concentrated and at the very early stages of operation. The investment did not perform well and the estate went on to sustain losses, for which compensation is now sought.

SJP say that the recommendation was suitable, Miss W's main objective was to reduce inheritance tax liability and this was met. The suitability report evidenced discussion around alternative options that were discounted. Risk, capacity for loss, term and affordability were all discussed along with a review of each provider and the applicable costs. Miss W was prepared to invest more into higher risk assets to gain IHT savings and would have been aware from the Information Memorandum (IM) that investment would be made into one or more holding companies with Oxford Capital acting as discretionary investment manager. A robust due diligence model was in place.

Our investigator considered the complaint. He thought the recommendation to invest in OCEPS exposed Miss W to more risk than she wanted to take and it was not made clear that she stood to lose her capital investment. This was a high-risk investment and SJP had misled Miss W by claiming that for a bit more risk she would secure tax advantages. These were not guaranteed and it was relevant that Miss W's focus had been to protect her assets, not place them at risk. Our investigator concluded that the recommendation was unsuitable for Miss W. Had Miss W been appraised of the full circumstances, he thought she would have invested differently, not within a tax wrapper. He thought it was fair and reasonable for SJP to pay the difference between the fair value of the investment (assessed against a FTSE UK Private Investors Income Total Return Index benchmark) less the actual value of OCEPS (to be assessed as zero if the investment remained illiquid) less tax reliefs.

The estate of Miss W agree that risk exposure was too high, they say the inclusion of OCEPS reduced diversification because investment was only made into two small size underlying companies, was more concentrated and increased risk. As to redress, the estate submit that the actual value should be benchmarked against the average performance of the other two recommended inheritance tax savings schemes, which provided greater diversification. Further, no credit should be given for any tax relief received as it was appropriate to recommend an inheritance tax saving scheme.

SJP say that across Miss W's wider investment portfolio, she invested in five inheritance tax services investments in total, one of which was made after the recommendation in 2016.

They suggest that as the complaint has been raised against one product only, it is likely performance driven. They highlight the estate's view that investment into a Business Property Relief (BPR) products was appropriate. Miss W was committed to IHT mitigation and in addition to the inheritance tax services, she also held three modest whole of life policies in trust. The high risk of investing in BPR businesses was made clear in the declaration for signed by Miss W. SJP maintain that splitting the funds into three schemes in 2016, diluted the risks and highlight there were 22 holdings within OCEPS.

I note that SJP made an offer on redress, in which they off-set the inheritance tax relief, to place the estate in the position as if the investment had been retained in the ISA wrapper. This offer was withdrawn following the estate's concession that it was suitable to recommend investment into BPR products generally and that IHT relief would always have been sought.

In addition to compensation for losses, the estate also seeks a refund of advice fees and £15,000 to compensate for the time and effort spent pursuing the complaint.

I wrote provisional decision in May 2023, in which I provisionally decided not to uphold the complaint. I thought it was helpful to highlight at the outset that our service has no regulatory or disciplinary role, which means we can't tell a business how to operate and we have no punitive powers. I noted the representative's earlier concerns about SJP's due diligence process. But explained that it isn't our role to make general findings about a business' process. We provide an independent, informal dispute resolution service, where decisions are made based upon the balance of probabilities. Where a finding is made that a business has done something wrong, redress will be calculated on a fair and reasonable basis.

I trusted that those acting on behalf of the estate wouldn't take it as a discourtesy that I had not addressed every point raised, I gave reassurance that I had read the information provided by both parties and I was aware of the representative's strength of feeling about this complaint. The decision focused on the core complaint as to the suitability of the recommendation of this particular investment to Miss W.

On behalf of the estate it was said that the advice to transfer into a BPR IHT-savings wrapper was appropriate for Miss W, but that this *particular* investment was mis-sold as being upper medium risk. The estate agreed that the main objective was to reduce IHT liability but *"not at any cost and did not override the objective to protect capital to the greatest extent possible within the BPR qualification requirement. This implicit objective means avoiding exposure to excess downside risk . . ."* The narrow issue was whether the recommendation to invest £53,000 into this particular scheme (OCEPS) was suitable for Miss W, not whether there were other products that were more suitable.

I was mindful that it wasn't fair and reasonable to make an assessment with the benefit of hindsight of the fund's poor performance. Whilst the representative had been clear that this wasn't the basis on which the complaint was advanced, I noted that no complaint had been raised about one of the other products that made a smaller loss. The focus of my assessment was at the point the recommendation was made, taking into account Miss W's particular circumstances, her objectives, attitude to risk and capacity for loss.

I considered Miss W's circumstances. At the time a client review was undertaken in 2016, Miss W held over £51,500 on deposit, £270,116 in an ISA and £85,602 in an inheritance tax planning service with another provider and had three small whole of life policies. Miss W also owned her own home and had no requirement for income.

### Objective

It was common ground, supported by the client review, that Miss W was seeking to protect her capital for her family to inherit and that her core objective, at this time, was to mitigate

IHT. There was also no dispute that the recommendation to invest in OCEPS stood to meet the objective of inheritance tax planning. Furthermore, each of the three products recommended by SJP targeted capital preservation, albeit this wasn't guaranteed, which was again in line with Miss W's objectives.

### Risk

I considered the information available to the adviser at the time. It was not disputed that Miss W's attitude to risk was assessed as medium and she was said to be invested in a balanced portfolio, the OCEPS was recommended on the basis that moving to an upper medium risk exposure, Miss W could secure the IHT relief she was seeking. The confidential client review said "overall medium risk investor but she is prepared to accept **up to Upper Medium range** [my emphasis] if it can provide her with access to investment solution that offer BPR relief and more time efficient options than normal trust planning routes." I thought it was fair to conclude that Miss W was willing to take some risk to gain inheritance tax relief.

In my view holding out the OCEPS as an *up to Upper medium* risk product in the body of the suitability letter was misleading, it was inconsistent with the information contained within the IM, which said "*investing is speculative and involved a significant degree of risk*". But, in this particular complaint it was relevant to look at the wider context. I balanced the information in the context of the wider discussions about BPR and Miss W's knowledge of these products at the time. Miss W was comfortable with 59.92% of her investable assets being in BPR, at the upper end of the recommendation bracket of 40%- 60%. I couldn't discount Miss W's pattern of investment into BPR products and the declaration signed by her, which said :

*A BPR investment represents a much higher risk than investing in later, well established listed companies on, say, the FTSE All Share Index*

*A BPR investment is inherently more illiquid than investing in larger well-established listed companies, and as a result you may be unable to sell them at the point you wish to*

*The high-risk nature of BPR investments means you could get back significantly less than was originally invested*

On balance, I found that it was more likely than not that Miss W understood broadly that BPR products were higher on the risk spectrum. This was clearly a risk she was willing to accept given her pattern of investing (repeated in 2018) and the suitability of investing in this type of higher risk product was accepted by the representative acting on behalf of the estate. As to this particular investment, Miss W would therefore have been aware that it had a higher risk exposure and I'd seen that the appendix to the suitability letter highlighted that the particular investment was regarded as "*having a significantly higher degree of investment risk with a view to reducing your potential inheritance tax liability after two years.*" So even if things had been clearer, I was not persuaded this would have made a material difference to the recommendation or to Miss W's decision-making process.

### Diversification

As to diversification, the IM was clear that investment was targeted to the infrastructure sector, with current focus on renewal energy and power generation. Investment was to be into one or more BPR qualifying companies and this was repeated in the appendix to the suitability letter. This meant the entire investment was at risk of same industry changes. But I was not persuaded this risk exposure was materially different from the other products

recommended at the time, each of which invested in relatively limited industry sectors and with each provider undertaking discretionary management of the investments.

The representative was right that as at 2016, OCEPS held three holding companies and Miss W invested into two, within which there were a number of subsidiaries. But that wasn't inconsistent with the information provided to Miss W, namely that fund would be invested in one or more qualifying companies. It was fair to say that a report from a third-party tax-advantaged investment expert noted the portfolio wasn't as diversified as originally envisaged as at May 2016 but further diversification was expected over time. There was nothing to show that wasn't a reasonable expectation and I noted the expert gave positive commentary about the expertise of the investment team, which SJP took into account. Again, I was mindful to focus my assessment on information available at the time and not on what happened later. Further, there appeared to have been some confusion around the information in the suitability letter, which said Oxford Capital gave a "spread of up to 40 underlying investments" and later claims that OCEPS was split across 22 investments. SJP confirmed that these figures related to a range of investments made by the underlying companies, recorded in the third-party report.

I agreed that it was unclear from the suitability letter that investment of £300m represented the total assets under management by Oxford Capital (see BPR relief matrix) rather than that within OCEPS. According to SJP figures the investment in OCEPS was £15million and I noted the representative says closer £6 million. Nevertheless, it was clear from the suitability letter that the other two providers were more established providers in the market, with significantly higher levels of historic investment, so I thought Miss W would have been aware that there was a difference. And I noted commentary from SJP's adviser, who confirmed that Miss W understood OCEPS was a smaller fund.

Despite some information shortcomings, I was not persuaded that they undermined the overall suitability of the recommendation to invest in OCEPS. The investment stood to provide IHT mitigation and was part of a wider recommendation to invest funds across a split of three providers, which it was reasonable to consider in context.

In my view, spreading the investment across three different providers wasn't inherently unsuitable; each product gave opportunity for inheritance tax relief, which was of central importance to Miss W. Further, it meant risk exposure was spread not concentrated in one provider. I did not agree with the representative's claim that diversification was reduced by adding a third provider, as I addressed above there was some diversification within the OCEPS and it was envisaged this would increase over time. It was also relevant from the suitability report that discussions took place about investing across a range of providers and the appendices show information was provided about each provider to Miss W.

#### Capacity for loss

It was also relevant considering Miss W's circumstances above that she had capacity for loss. Miss W did not need access to the funds for day-to-day living, had retained emergency funds on account and was clear that she did not wish to leave the funds invested within her ISA.

#### Conclusion

Considering all the information from the time in the round, I was satisfied that Miss W was very much involved in the decision-making process and appeared to have been a driving force behind pursuing IHT efficient investing through BPR products. That was plain from the suitability letter that recorded Miss W was aware she could die at any time, had the will to make decisions and so wished to proceed with IHT planning, which she went on to enhance

in 2018. Investing a further £125,000 into an accelerated inheritance tax solution with one provider.

It was unfortunate that the OCEPS did not perform as well as the other products recommended at the time, but the fact that risks materialised, did not mean it was unsuitable for Miss W.

Balancing Miss W's desire for IHT mitigation in the context of her pattern of investing and engagement in decision-making, I was not persuaded that she was exposed to more risk than she wanted to take with this particular investment. Considering all these factors in the round, I found that the recommendation was not unsuitable for Miss W and it followed that I did not uphold the complaint.

Both parties have received the provisional decision. SJP have nothing further to add. The estate disagrees with the outcome and I have considered the response below along with reconsidering all the information provided, in order to reach a final decision.

### **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've carefully considered the points raised on behalf of the estate and I'd like to give reassurance that I understand the thrust of this complaint is that this particular product, OCEPS, ought not to have been recommended to Miss W. Those acting for the estate have repeated the core concerns namely that the product was unsuitable for Miss W because of the risk around the, *"limited range of under-diversified and unnecessarily risky underlying investments, particularly when better effective diversification could be achieved by selecting only two established less risky providers."*

For the same reasons as out in my provisional decision, it remains my view that it is fair and reasonable to consider the recommendation in context when assessing its suitability for Miss W. This decision focuses on whether the recommendation was suitable for Miss W, to be clear I'm not required to consider whether other products may have been more suitable. I have independently assessed the information provided by both parties and have made my decision based upon the balance of probabilities.

I appreciate that those acting for the estate feel strongly about this matter and firmly disagree with the outcome reached in the provisional decision. I have taken into account the response on behalf of the estate, the majority of which addresses the information already provided, which I have considered. Whilst I may not address every point raised, I have given careful consideration to everything provided by both parties in reaching my final decision. Having carefully considered the information provided, but I'm not persuaded to change my view.

There isn't any dispute that an estate planning service met Miss W's objectives as detailed in my provisional decision and that's made clear by those acting for the estate who say that the advice to consider inheritance tax services products *"was/is virtually a 'no-brainer'/easy-win' to be give to someone in [Miss W's] position (i.e. being someone of advanced years with a sizeable potential IT liability)." Those acting for the estate say that, "the BPR IHT saving concepts, net capital preservation would have been the lynch-pin of any advisory strategy."* As I've already addressed, the IM is clear that OCEPS was aimed at capital preservation, targeting maintenance of the capital sum, whilst also aiming to provide inheritance tax mitigation. That a series of risks materialised several years after investment does not undermine the underlying investment strategy.

It's been suggested that SJP failed to consider Miss W was a vulnerable consumer in respect of this particular investment. This point hasn't been raised before but in any event there is nothing to show that SJP didn't consider Miss W's particular circumstances when recommending this product. There was no issue with capacity at the time and Miss W did have family representatives with whom the business spoke. It's also now been suggested that undue reliance should not be placed on Miss W's signing of the BPR declaration. As addressed in my provisional decision, I'm satisfied that the contemporaneous notes show that Miss W came to her adviser seeking inheritance tax mitigation solutions and this was a focus she chose to pursue with an understanding of the higher risks. I'm persuaded that the contemporaneous notes are likely to be a more accurate reflection of events at the time that those now suggested by the representative for the estate.

Those acting for the estate repeat that investment with a reliable and proven provider would have been appropriate and imply that this would have reduced risk. They point again to the better performance of the other providers. But as I've explained in my provisional decision the nature of these types of schemes means that they are inherently higher risk. I've read the sections of the third-party report identified by those representing the estate and I've balanced that with the overall conclusions in the report, leading to an overall positive score card rating of 85. I've also noted that the Manager was said to have a strong presence in the tax efficient space and a good reputation in renewable energy investment. Further, it was anticipated that the return profiles were achievable under normal market conditions, the risk management process was described as extensive and robust and the capping of performance fees was said to better align the Manager to take risk more in-line with the investors targeted returns. It remains my view that it was not unreasonable for SJP to place reliance on the report conclusions.

It's plain those representing the estate believe there should have been more diversification within this particular product and have given a comparable example of funds being split across two index tracker funds with different providers and the third in two AIM listed companies. I don't agree that this is an analogous example because it's common ground that the recommendation was across three inheritance tax savings products. I'd like to reassure the representative that I have understood the submission that it is his view that this particular product should be considered in isolation and was higher risk because of the lack of diversification. But it remains my view that the recommendation was suitable for Miss W for the reasons addressed in my provisional decision. Further, I remain of the view that it is also fair and reasonable to consider the investment across all three providers in the round along with Miss W's consistent pattern of investment into inheritance tax mitigation products. Further, it was a relevant factor that both before and after this investment, Miss W chose to invest funds with single providers. This bolsters my view that she was very much engaged with the decision-making process.

As I've explained in the provisional decision above, I'm satisfied that it is more likely than not that Miss W understood these products were higher risk and it is likely that she was prepared to take those risks to achieve inheritance mitigation. I've not seen anything new to persuade me otherwise. It's also common ground that Miss W was in a position to withstand some losses.

In light of my findings in the provisional decision and considering the matters above, I am not persuaded that the recommendation was unsuitable for Miss W.

### **My final decision**

For the reasons given, I am not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Miss W to accept or reject my decision before 4 August 2023.

Sarah Tozzi  
**Ombudsman**