DRN-4644148

Financial Ombudsman Service

The complaint

Ms R complains about St. James's Place Wealth Management Plc's (SJP) administration of her investment after two investment bonds were transferred to her. She says this has resulted in her missing an opportunity to encash the bonds and caused her losses due to the tax liability she now faces.

What happened

In late December 2021, SJP completed a change in ownership of the bonds from Ms R's mother to herself. On 6 January 2022, a letter was sent by SJP to Ms R which confirmed the transfer and noted that tax regulations require it to obtain information regarding the tax residency of clients – saying it would request this if not held. On 10 January 2022, SJP wrote to Ms R's mother indicating it needed some identification for Ms R and requested certified copies of documents. SJP said there was no reply to this letter

On 23 February 2022, Ms R's financial adviser submitted a Letter of Authority (LOA) and information request on the investments. SJP said it rejected this as it had no record of any signature having been held on file for Ms R but requested copies of the 'relevant documents' to allow it to update its files and record the LOA.

On 23 March 2022, Ms R submitted a request to SJP to fully encash one of the bonds and a partial encashment of the other (27 segments only). The request didn't take place at this time.

Following this, in April 2022, Ms R raised a complaint with SJP regarding its handling of her investments following the transfer.

In June 2022, SJP responded to the complaint and made an offer to Ms R. In summary it said:

- It could have done more to update Ms R on its requirements to complete the update of its records for her. And had it been clearer, it acknowledges she likely would have had time to submit the withdrawal instruction to encash the funds from the bonds in the 2021/22 tax year. And the remaining funds could then have been taken in the 2022/23 as suggested by her adviser.
- It offered to cover the difference in tax payable on the encashments of the bonds payable in the 2022/23 tax year, above that which would have been paid had these withdrawals straddled the 2021/22 and 2022/23 tax year as intended. In addition, it offered to cover the reasonable costs of an accountant to conduct the calculations to demonstrate the difference in the tax payable, as well as a further £250 in respect of any trouble and upset this matter has caused.

Ms R didn't accept the outcome. As no agreement could be reached the complaint was referred to this service for an independent review.

I issued a provisional decision in February 2024. This is what I said:

"Firstly, I note the failings that were identified and admitted to by SJP are in relation to issues in setting up the bonds in Ms R's name following the transfer in early 2022. It accepted these failings prevented her from completing an encashment request as she intended within the 2021/22 tax year. Ms R claimed this caused her a loss as she would have an increased tax liability due to differences in her earnings between tax years.

So, the starting point is to put Ms R back in the position she would have been but for these failings. As noted above SJP, made an offer that included a tax liability comparison, to cover the accountant fees required for the tax comparison, and a payment for distress and inconvenience suffered.

Since the complaint has been waiting for a decision, Ms R provided a copy of a calculation from her accountant (with an invoice). But importantly, the bonds still aren't surrendered, so there isn't any crystalised loss that can be quantified and she hasn't incurred a tax liability. In my view the fact the bonds aren't yet surrendered has an impact on the losses Ms R claims.

Taking the tax liability initially, SJP agreed to cover the difference Ms R incurred by encashing in the 2022/23 tax years compared to what she would have incurred if it had accepted her March 2022 surrender request, so that a part surrender could be made in the 2021/22 tax year. But as the encashment of the bonds still hasn't been completed, it means it won't now be possible to complete the tax liability comparison SJP agreed to as Ms R didn't incur a tax liability in the 2022/23 tax year.

I haven't found that SJP can be held responsible for Ms R not encashing the bonds in the 2022/23 tax year. The investigator accepted her explanation for not completing the encashment by the time the complaint was referred to this service at the end of October 2022. But in his assessment dated 19 December 2022 he explained that it was reasonable for Ms R to complete the encashment within six weeks to allow the loss calculation to be complete before end of the 2022/23 tax year.

SJP has raised concerns about why no encashment has taken place and noted the fact the value of the bonds has been increasing, which suggests Ms R is intentionally retaining the investments. Ms R has recently indicated she still intends to encash and told us about some health issues that have been impacting her causing a delay. So while there are reasons why the encashment hasn't taken place, I don't think it can be said SJP has caused this or failings on its part have prevented Ms R from taking action.

I acknowledge Ms R provided a tax calculation in June 2023 from an accountant. I've looked at this information. I note the accountant indicates that her earnings were actually less in the 2022/23 tax year than they were in the 2021/22. But it does seem that she would be a basic rate taxpayer in both years. So, it does appear that she didn't fully utilise her allowance in the tax year 2021/22 as a result of the requested encashment not completing. But the fact no encashment happened in 2022/23 means she also missed out on utilising her allowances for that tax year too. For the reasons I've explained above, I don't find SJP responsible for no encashment occurring in the 2022/23 tax year, so it follows it isn't liable for any additional tax liability because of this.

Having reviewed the tax calculation further, I note it doesn't follow the offer made by SJP as it provides a comparison between the 2021/22 and the 2023/24 tax year. It also only gives a hypothetical scenario as Ms R hasn't, as yet, encashed her investments in the 2023/24 tax year. It isn't surprising the accountant didn't complete the comparison in line with SJP's offer - a comparison with the 2022/23 tax year - as no encashment (so no tax liability) occurred in this tax year. This all means I don't agree SJP needs to meet the figure detailed in the calculation provided by Ms R's accountant. While I don't think this calculation accurately reflects a loss suffered by Ms R as a result of SJP's failings, I still think it is reasonable for

SJP to cover the accountant fee that she was invoiced for in June 2023. I'm satisfied Ms R instructed the accountant in good faith as she was trying to resolve the issue.

So, in conclusion on this point, due to the fact Ms R didn't encash the bonds in the 2021/22 tax year, she will likely suffer a detriment when she encashes her investments, this is because she didn't fully utilise her allowances in that tax year. This will only become a crystalised loss if the bonds are encashed and she is a higher rate taxpayer (which she says she is now). I don't find it is reasonable to hold SJP responsible for any tax liability beyond this. So, it is reasonable to require Ms R to surrender the bonds within the next three months. If she decides she no longer wants to surrender the bonds within this timescale, it is reasonable to assume she intends to retain them. It follows there will be no compensation to pay for a tax liability for this part of the complaint as I don't think it is fair and reasonable to hold SJP liable indefinitely.

SJP has provided information relating to the value of the bonds. It has confirmed that the combined values are around £10,000 more than they were when Ms R raised her complaint in April 2022. So, this indicates that by retaining the investments she has actually benefited rather than suffered a loss. So, it follows that there isn't any market loss here that can be attributed to failings by SJP.

Finally, I have considered the distress and inconvenience Ms R has suffered as a result of SJP's failings in early 2022. It is apparent that she has been caused upset by the information provided to her by SJP at times. She also had the frustration of not being able to complete her encashment as intended in March 2022, alongside the subsequent difficulty this has caused in trying to resolve things. SJP made her an offer to £250 compensate her for the impact of its admitted failings. I've considered this offer and I'm satisfied this level of compensation is fair in the circumstances."

SJP responded and confirmed its agreement to the provisional findings.

Ms R didn't respond by the deadline set.

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.

As neither party has provided further evidence or arguments in response to my provisional findings, I've got no reason to change the outcome I set out in my provisional decision.

To confirm, for the reasons described in my provisional decision, I find failings by SJP in the administration of Ms R's investments prevented her from making an encashment when she had given an instruction to. This has had an impact on her both financially and in practical and emotional terms. It follows, I uphold the complaint.

Putting things right

To put things right, St. James's Place Wealth Management Plc need to follow the below:

- Provided Ms R surrenders the bonds within three months of the date of this decision, and she is a higher rate taxpayer at the time, it needs to calculate the additional tax she will have to pay as a result of not encashing in the 2021/22 tax year. The following formula is a reasonable why of achieve this:

  Take the threshold for higher rate taxpayer in 2021/22 (assumed to be £50,270) subtract Ms R earnings in this tax year (£42,419.57 – as per the accountant's calculation). This gives the headroom she had before any chargeable gain would incur higher rate tax. Pay her the additional 20% tax she will pay on this amount as a result of surrendering the investments when she was a higher rate taxpayer.

- Refund any fee Ms R has incurred from her accountant for the June 2023 calculation.

- Pay her £250 in compensation for the distress and inconvenience she has suffered as a result its failings.

My final decision

I uphold Ms R's complaint and require St. James's Place Wealth Management Plc to pay the above compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms R to accept or reject my decision before 25 March 2024.

Daniel Little
Ombudsman