

## The complaint

Mrs M and the estate of the late Mr M complain that St James's Place UK plc ("SJP") failed to transfer bonds into a discretionary will trust.

The complaint is brought by Mrs M in both her personal capacity and as executor of her late husband's estate.

Mrs M says that SJP wrongly transferred the bonds into her name, whilst assuring her they were held in trust. And that it took too long to sort things out and to respond to her complaint. She says she wants SJP to indemnify her for any tax liabilities caused by the transfer of the bonds, to reimburse her legal costs, and to compensate her for the distress and inconvenience she's been caused.

## What happened

Mr M passed away in 1995. In his Will, he'd instructed the executor to transfer two bonds, which he held in an account with SJP, into a discretionary will trust. He appointed Mrs M and a solicitor as trustees.

This happened many years ago, so the sequence of events is not entirely clear. But Mrs M provided SJP with a copy of Mr M's will and in November 1995 SJP wrote to tell her that one of the bonds was "*now in your name as trustee*". And in March 1996, SJP confirmed that the ownership of the bonds had passed to Mrs M, as executor, and that, under the terms of the will trust, she is a trustee, and the bonds fall outside of her estate. Mrs M understood that the bonds were being held in trust.

In 2017, Mrs M queried why the bonds were showing in her account statement as being personally owned by her. SJP replied saying that, "*the bonds are definitely in trust*".

But in 2022 it became clear that the bonds weren't held in trust and were in Mrs M's sole name. She had to retrieve paperwork from when her husband died to evidence to SJP that the bonds should be held in trust, and she sent this to SJP in early November 2022.

SJP said it would get the bonds placed in trust and then fully investigate what had happened and consider compensation. And it confirmed this again in January 2023.

In February 2023, as no progress seemed to be being made, Mrs M instructed a solicitor to deal with this on her behalf. (For the avoidance of doubt, this wasn't the same solicitor who had been appointed trustee.) The solicitor complained to SJP on Mrs M's behalf. SJP didn't have Mrs M's authority for it to communicate with the solicitor. This meant that it didn't respond to the solicitor's letter or follow up communications. SJP received Mrs M's authority on 19 July.

In July 2023, SJP said the bonds weren't held in trust because a deed of assignment hadn't been completed. It gave assurance that an assignment now wouldn't trigger a chargeable event. And, in October 2023, it said it didn't need to indemnify Mrs M for any potential

inheritance tax (“IHT”) liability because in making the assignment Mrs M was acting as executor.

In December 2023, SJP sent Mrs M its final response to her complaint. It said that, although it was Mrs M’s intention to place the bonds in trust, SJP couldn’t do that without a completed deed of assignment. It appreciated it had taken some time to investigate matters and offered her £250 for the distress and inconvenience caused.

In March 2024, SJP provided deeds of assignment, and these were completed and returned by the trustees.

When she referred the complaint to us, Mrs M explained why this had been so upsetting for her and why she thought the £250 offered wasn’t enough. She also wanted SJP to refund her solicitor’s costs, which the solicitor had capped at £1,500 including VAT. And she wanted SJP to indemnify her for any tax liabilities caused by its mistake.

Our investigator thought SJP was at fault for not assigning the bonds sooner and that it needed to do that, and to provide an indemnity for any tax as a result of the bonds not being placed in trust. But the investigator didn’t think the solicitor’s costs should be reimbursed, because Mrs M could’ve brought her complaint to us free of charge. And, as Mrs M was bringing this complaint in her capacity as executor of the estate this service couldn’t award her any compensation for distress and inconvenience.

Mrs M didn’t agree and asked for her complaint to be passed to an ombudsman.

Around the time our investigator sent her conclusions to both parties, the deeds of assignment were completed and SJP confirmed the bonds were now held in the names of Mrs M and the joint trustee as trustees of the late Mr M’s discretionary will trust.

SJP belatedly provided answers to questions raised by the investigator. It said it hadn’t taken appropriate action when Mr M passed away and that no responsibility or fault lies with Mrs M – it should have told her what was needed to put the bonds into trust. And it said it first became aware there was a problem on 3 November 2022.

### *My provisional decision*

I was minded to agree with our investigator that SJP should provide an indemnity for any tax liabilities that arise due to its mistake, along with any professional costs associated with those liabilities. But I thought, in addition, that this service could make an award for distress and inconvenience. I explained why in my provisional decision. I said:

Most of the facts of this complaint aren’t in dispute. All parties now seem to agree that SJP was at fault for the bonds not being placed in trust in 1995. What remains in dispute is the implications of that error and the fair way to put things right.

I appreciate Mrs M feels the capacity in which she’s bringing this complaint is a matter of semantics. Let me briefly explain why it’s important that this service accurately records the correct parties involved in a complaint.

This Service operates under a set of rules laid down by Parliament under the Financial Services and Markets Act 2000, published by the Financial Conduct Authority (“FCA”) and known as the DISP rules. I am entirely bound by these rules, and I can’t disregard them. If I did, any decision I reached wouldn’t be enforceable in court.

One of the things these rules cover is that a complaint must be brought by an eligible complainant or, of relevance here, on behalf of an eligible complainant. Specifically, by someone authorised by law to bring a complaint on someone's behalf – like the executor of an estate. DISP 2.7 gives details of what is required for someone to be an eligible complainant.

This complaint is about two bonds which the late Mr M instructed through the terms of his Will should be transferred into a discretionary will trust. The complaint is that SJP failed to follow those instructions. I find the eligible complainant here is the late Mr M as he was SJP's customer. As he's passed away, it is his estate that is eligible to bring the complaint and, as executor, it's Mrs M who's done that.

But, whilst SJP maintains the bonds were being held in Mrs M's sole name as executor of the estate, I find it actually transferred the bonds into Mrs M's existing sole account and there was nothing to indicate the bonds were being held other than for Mrs M's own benefit. One key elements of this complaint is that Mrs M wants SJP to provide an indemnity for any tax liability that may arise as a result of the bonds being transferred into trust from her personal account. This tax would likely be due to be paid by her, or her estate. For these reasons, I find Mrs M also brings this complaint in her personal capacity. She was herself SJP's customer, and I'm satisfied that part of this complaint – the tax implications of her having held these bonds personally, relates to her own customer relationship with SJP as well as her late husband's. This means I can make an award for compensation for any distress and inconvenience that I find SJP has caused.

Since our investigator issued her view of the complaint, I'm pleased to see that the deed of assignment has been completed and the bonds are now being held in trust, as originally instructed in Mr M's will.

SJP says the transfer is not a chargeable event for tax purposes because the transfer is from the estate into the trust. And, for the same reason, SJP says it doesn't need to indemnify Mrs M against any potential IHT liability. But I'm not minded to conclude the position is as clear cut as SJP suggests. I've not seen any confirmation from HM Revenue & Customs ("HMRC") that the delayed transfer to the trust will not result in a tax liability. If HMRC agree that Mrs M has been holding the bonds in her name as executor of the estate, this means the estate administration wasn't completed until March 2024. It's not clear to me if this could give rise to any tax liabilities for Mr M's estate.

But it's also possible that HMRC may take the view that the bonds were transferred into Mrs M in 1995/96, after all they were showing in her personal account for many years. This means there is some risk that HM Revenue & Customs will take the view that the transfer of the bonds was from Mrs M to the trust which may lead to a tax liability either for her, or when she passes away.

So I find it's fair that SJP provides an indemnity – both to Mrs M and to the estate of Mr M - for any tax which arises as a result of the bonds not being placed in trust in November 1995. I've chosen this date because on 29 November 1995, SJP wrote to Mrs M to confirm that one of the bonds was "*now in your name as trustee of [Mr M's] will*". Our investigator concluded that the bonds should have been placed in trust in May 2017, as that was the first date she thought that SJP had, wrongly, confirmed the bonds were held in trust. But since then, SJP has accepted it should have done more in 1995 to explain to Mrs M what she needed to do. And, had it done that, the bonds would have been held in trust since then.

In addition, should tax calculations be needed, it's likely Mrs M will need to employ an accountant, for example to provide advice, complete calculations and correspond with HMRC on her behalf. SJP should indemnify Mrs M for the resulting costs.

Mrs M wants SJP to reimburse her for the solicitor's fees she's had to pay. I'm sorry to disappoint Mrs M, but I agree with our investigator. I find Mrs M instructed the solicitor to progress her complaint. And whilst I understand her frustration and worry – because SJP took too long to sort things out – she could've referred her complaint to us free of charge. It was her choice to employ a solicitor and I don't find it would be fair or reasonable to order SJP to meet the cost of her doing so.

SJP has offered to pay Mrs M £250. I don't think that is enough to compensate her for the distress and inconvenience she's been caused. Firstly, there were many opportunities over the years for SJP to reasonably realise the bonds hadn't been assigned into a trust and, had it identified this earlier, it wouldn't have caused Mrs M as much distress as it has now. It reviewed Mrs M's investments on at least an annual basis and it should reasonably have questioned why the bonds were showing in her personal account when there should have been a separate trust account. And Mrs M raised this very question in 2017 and SJP still failed to realise the trust hadn't been set up.

When it was identified in November 2022 that the bonds weren't held in trust, Mrs M had to locate the paperwork from 30 years ago. She told SJP at the time how and why this rekindled distressing memories for her and the trauma she felt. But it wasn't until December 2023 that it completed its investigation into what had happened, and it wasn't until March 2024 that it provided Mrs M with a deed of assignment. Knowing the upset the situation was causing Mrs M, I think it should have acted more urgently to resolve the matter. In the circumstances, I consider £750 to be fair and reasonable compensation.

I invited both parties to provide any further information or evidence. SJP didn't respond. Mrs M said she agreed in principle with my provisional decision but didn't think £750 was enough to compensate her for the distress and inconvenience she'd been caused. She said, in summary, that:

- SJP did not comply with the FCA's complaint procedures. She wasn't told she could refer her complaint to us until SJP sent its final response letter.
- SJP failed to contact her or her solicitor for several months.
- SJP has now conceded it made mistakes. Had it done this earlier, matters could have been resolved at an earlier stage. Instead, the last two years has been gruelling, horrendous and distressing for her.

### **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.

Mrs M has set out why she thinks she should receive more than £750 for the distress and inconvenience she's been caused. I've reconsidered this carefully. Whilst I sympathise with her situation, I had already taken the matters she's raised into account in arriving at the figure in my provisional decision. My conclusion remains that I find £750 is fair and reasonable in the circumstances.

## **My final decision**

My final decision is that St James's Place UK plc should:

1. Indemnify Mrs M for any tax liabilities that arise, either during her lifetime or following her death, as a result of the bonds not being transferred into a discretionary will trust in November 1995.
2. Indemnify the estate of the late Mr M for any tax liabilities that arise as a result of the bonds not being transferred into a discretionary will trust in November 1995.
3. Indemnify Mrs M for the reasonable professional costs associated with any tax liability arising in her own name or in the estate of the late Mr M. This cost would cover, for example, the calculation of tax, advice, and communication with HMRC.
4. Pay Mrs M £750 for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M and the estate of Mr M to accept or reject my decision before 14 January 2025.

Elizabeth Dawes  
**Ombudsman**