

## **complaint**

Mr J complains Prism Financial Advice Limited wrongly advised him to encash his investment bonds without regard to the likely tax implications. It failed to explain he would, as a higher-rate taxpayer, face chargeable gains.

## **background**

Mr J said Prism's advisor did not explore the possibility of partial encashment of the bonds or the option of utilising his existing bonds to provide the 5% withdrawals he was looking for. This could've met his annual ISA allowance objective without the need to encash the bonds.

He said that on top of the extra tax liability he'd been charged a 3% set-up fee and a 1% ongoing charge. He therefore wanted both his tax liability and the new charges refunded.

He also objected to the advisor's recommendations concerning inheritance tax protection when this issue had never been discussed. He said he had no wish to consider this issue as he was single with no dependents. He further said that the advisor failed to discuss his early retirement plans.

Prism rejected his complaint. It said Mr J, in 2015, had confirmed he was now a basic-rate taxpayer and its advisor explained there would be no chargeable gains if his status remained unchanged (taking account of the inevitable chargeable gains).

It said the advisor maintained contact with Mr J about this issue and Mr J did reduce his income to keep within the basic tax rate. The advisor sought to discuss the matter further in early 2016 but Mr J did not respond until making a complaint in March of that year. It then acted proactively to assist Mr J in his objectives including pre-funding a SIPP plan.

It said the recommendation to surrender the investment bonds was not to finance that year's ISA but to provide his portfolio with reduced exposure to risk through greater diversity, flexibility and potential tax efficiency. It reduced the standard set-up charge from 3% to 1%. It agreed to pay Mr J £500 in lieu of various communication failures.

An adjudicator at this service felt the complaint should be upheld.

He said it was clear that Mr J was always likely to remain a higher level taxpayer despite his attempts to reduce his income (via pension contributions etc.). In this context he felt the tax bill of £3,889 was a direct result of Prism's advice to encash the bonds.

He felt this tax bill could've been avoided, and Prism should pay it. He also thought it should pay the 1% set-up fee for the new bond but not the ongoing 1% charges as these would've continued under the existing bonds. He felt the £500 offer for poor communication issues was a reasonable offer.

Prism did not agree, and said:

- It wasn't clear that Mr J was always going to remain a higher-rate taxpayer at the start of the 2015/16 tax year when it provided the encashment advice. If he'd not increased his overtime during the year he would have stayed in a basic rate band

- His emails confirmed his intention to remain a basic rate taxpayer; having agreed to surrender the bonds he then chose to take work which pushed him into a higher-rate band
- He increased his pension payments as a result of its advice; it was only later in 2015 that he sought advice about early retirement
- In December 2015 its advisor recommended setting up a SIPP to maximise his pension payments (and minimise his income) but he didn't respond to offers of help on this issue
- Only at the last minute did it persuade Mr J to make a lump sum payment into a SIPP which effectively gave him £4,000 he wouldn't otherwise have had. This sum more than covers the encashment tax liability
- The actual tax bill specifically arising from the bonds' encashment is £1,479; the rest of the bill was due to other dividends/earnings
- Overall, the encashment tax liability was due to Mr J's actions/inactions following the surrenders

## **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The key issue, for me, is whether there were sufficient reasons to recommend surrendering Mr J's existing bonds to reinvest in a new portfolio as this would inevitably involve a new set-up charge irrespective of any potential chargeable gains.

In my view there is not sufficient evidence to justify this recommendation. The advisor makes highly generalised references to the existing investments no longer offering the benefits they once did without offering any specific concerns about the bonds in question. Equally, he offers no detailed explanation as to why the proposed new investments would deliver better growth potential etc.

Crucially, the advisor does not explain why the existing portfolio could not be adjusted to potentially improve performance or provide greater flexibility etc. thereby avoiding encashment chargeable gains and new set-up charges.

If Mr J had not been advised to go down this route he would not have incurred either a new set-up charge or a chargeable gain. He would have kept his original bonds and avoided both of these.

So while I broadly agree with the adjudicator about Mr J's likely ongoing higher-tax band status, and for the reasons he has given, the fact is he simply would not have incurred any tax bill if he'd not been wrongly advised to encash the bonds.

That said, I find it very surprising that the advisor did not clearly spell out the chargeable gain issue in this suitability report even if he believed Mr J was likely to take sufficient steps to reduce his tax status. This was a very significant error which undermined the overall advice

at the heart of his report. Prism is therefore liable for this unnecessary tax charge arising from its poor advice.

I don't dispute that it may have sought to help Mr J reduce his taxable income, including proactively assisting him to set up and fund a SIPP, but this does not mitigate its liability for the inappropriate encashment. This was simply appropriate advice for a client seeking to maximise pension contributions and minimise tax liability.

Prism must therefore refund the 1% set-up fee it charged on the sum put in the new portfolio from the encashed bonds along with the tax bill arising from the bonds' encashment. From what I've read, I'm satisfied this figure is £3,889 and this is what Prism should pay.

It should also add 8% simple interest to these two figures from the day the set-up fee was taken and the date Mr J paid this tax bill through to the date of settlement of this complaint.

It should also pay the £500 it has previously offered.

### **my final decision**

I uphold this complaint and instruct Prism Financial Advice Limited to pay compensation as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 20 October 2017.

Tony Moss  
**ombudsman**