

Mrs F has complained, through her representative, about the advice she received from Zurich Assurance Ltd ("the business"), formerly known as Allied Dunbar, to invest in a gift and loan trust.

Mrs F considers the advice was unsuitable for the following reasons:

- It involved the sale of offshore investment bonds which are seen as unnecessary.
- Mrs F was not domiciled in the UK and, as the gift and loan trust is generally marketed for nationals domiciled in the UK, it was an inappropriate recommendation.
- Mrs F's representative considers the fact find and suitability letter were superficial and so, bearing in mind her advanced years, it is unlikely that Mrs F understood the nature of the advice given.
- Mrs F's representative believes that the adviser misunderstood residence and domicile for tax purposes, did not distinguish between onshore and offshore investments and had not considered the effect of making a potentially exempt transfer.
- The complaint was originally upheld by the business. But Mrs F's representative believes that once the cost to Zurich became apparent, it withdrew the offer despite being notified it was acceptable.

Background

The adjudicator originally enquired whether Zurich would re-instate the offer it had made in July 2012.

The business said a mistake had been made when it decided at that stage to uphold the complaint. It wrote to Mrs F's representative to confirm the offer had been withdrawn on account of the error. It also did not believe the offer had been accepted before it was withdrawn. It was willing to pay Mrs F £1,000 in acknowledgement of the distress and inconvenience she had been caused.

The adjudicator believed that this aspect of the complaint would be best dealt with in court, mindful of the specific events upon which it turned and the maximum award threshold of £150,000 of the Financial Ombudsman Service.

In relation to the merits of the complaint, the adjudicator concluded that the advice was not flawed. He accepted that there were other possible approaches to Mrs F's objective to mitigate inheritance tax, but the use of offshore investment bonds, into which the capital was invested, was not intrinsically unsuitable advice.

Mrs F's representative did not accept the adjudicator's opinion. He maintained that Mrs F could have used other products, such as certain exempt gilts or unit trusts, or could have moved existing assets offshore without the need for a gift and loan trust. He also considered the adjudicator had reconfigured the complaint, and did not agree that the important issue of the withdrawn offer should be excluded.

The business' offer of £1000 for distress and inconvenience had been rejected in favour of bringing the dispute to the Financial Ombudsman Service.

As no agreement could be reached, the complaint has been passed to me for review and a final decision.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

As an initial point, I have considered the issue of the offer the business made initially to Mrs F to resolve the dispute, and its subsequent withdrawal. In particular, I have considered the sequence of events.

When the offer was received by Mrs F's representative, he responded to it by an email having discussed it with his client. Whilst it seems Mrs F had some reservations about the offer, it was stated that she was prepared to accept it in principle, but put forward what was described as three important caveats. These included requiring the payment to be made gross, without the deduction of tax. She also did not believe that it should be necessary for the other trustees to have to agree to the offer.

The representative confirmed that, subject to the forgoing points, Mrs F would be arranging for her acceptance to be notarised by her lawyer in her country of residence.

However, before it had received the written acceptance from Mrs F, the business wrote to her representative confirming it was withdrawing the offer it had made. The business stated this was because it believed the original response may have been based on incorrect information, and it was reinvestigating the complaint. It was prepared to pay Mrs F £500 for the distress and inconvenience she had suffered (this was subsequently increased to £1,000).

From the evidence I have seen, it does not seem that the business had received a clear and unequivocal acceptance of the offer it had made at the point where it withdrew the offer.

Whilst the representative had confirmed Mrs F's acceptance of the offer *in principle*, it is apparent Mrs F also had a number of concerns about the offer. Further, the acceptance form Mrs F signed was not the one the business issued, but a revised version. This was received by the business after it had notified Mrs F's representative of its change of stance.

In the circumstances, I am unable to safely conclude the offer was accepted before it was withdrawn. I am therefore unable to order the business to honour the offer. I have therefore considered the merits of Mrs F's complaint, and the suitability of the advice she was given.

In 2001 it seems Mrs F approached the business seeking advice to reduce her inheritance tax liability, having received a large inheritance from her late father. She was resident outside the UK, and was not a UK tax payer.

The adviser recommended that part of the inheritance monies be placed in two offshore bonds under a gift and loan trust arrangement. The capital to be invested was mainly shares that formed part of the inheritance, which were to be transferred into the bonds "in specie". In other words, there would be no change to the actual investments Mrs F owned, only that they would be now be held within the ambit of the offshore bonds.

I have noted the concerns expressed by Mrs F's representative about the use of a gift and loan trust in association with these investments. However, as I trust he appreciates, there was no additional cost entailed by taking such action. The underlying charges for the bonds were the same whether within such an arrangement or not. Further, I have not seen evidence that this has caused Mrs F any financial disadvantage. Therefore, whilst I accept that the adviser was mistaken in recommending the use of this trust arrangement, I have not seen evidence that this has in itself caused her any financial loss or other detriment.

Although Mrs F was not liable for UK tax, because the inheritance she received was invested in the UK, she could have been liable for tax on this at some point in the future. This seems to have been a concern for Mrs F. It therefore was reasonable to consider methods by which this could be addressed.

As the business has explained, by placing the investments in the offshore bonds, this had the effect of removing the potential future tax liability. Overall, given Mrs F's requirements to mitigate her tax liability while retaining access to her capital and also receiving an income, the advice seems to have largely met her needs.

I understand Mrs F's representative has also expressed concern about the investment performance of the two bonds. However, as noted above, the initial investment within the bonds was essentially the shares Mrs F had received through the inheritance.

A short while later Mrs F engaged a separate business to act as investment managers on her behalf on a discretionary basis. Whilst this may have been suggested by the adviser, it was not necessarily an inappropriate approach, taking account the substantial sum Mrs F had invested. Therefore, from that point onwards it would be the other business that was responsible for the selection of funds and asset types held within the bonds. Any concerns Mrs F may have about this should be referred to the discretionary managers.

As noted above, the business offered to pay Mrs F £1,000 in recognition of the distress and inconvenience she has been caused when it changed its position on the outcome of her complaint. Whilst I understand this has previously been rejected, on balance I find the offer fair and reasonable and no less than any award I would make in this case.

The business has told us that the offer of £1,000 is still available. Therefore, Mrs F and her representative may wish to give this further consideration.

my final decision

My decision is that I do not uphold this complaint and I make no award.

Doug Mansell
ombudsman