DRN-3174698

The complaint

Mr M mainly complained that Allied Financial Services Ltd (AFS) gave him unsuitable advice to invest into an Investment Bond. Mr M faced tax bills on encashment which he said were entirely avoidable if he had invested differently.

What happened

Mr M took investment advice from AFS in February/March 2016. He told AFS that he wanted to try and get a better return on cash savings held on deposit with a view to securing a better retirement. It was recorded that Mr M had a cautious attitude to risk for this particular investment and that his investment objective was capital growth for the first 2-5years and income after that.

AFS recommended he invest £314,791.29 into an investment bond with a third party provider which it selected on the basis that it offered a better choice of cautious funds than other providers, its performance in the cautious investment market had been extremely competitive and it had an excellent reputation within the investment industry.

In 2017, Mr M decided that he no longer wished to use the services of AFS as his adviser, and AFS had no further involvement with the actions Mr M took regarding the investment bond. Mr M encashed the bond in early 2020 after becoming concerned about its performance. This resulted in significant tax liabilities for Mr M and impacted on his personal tax allowance.

Amongst other things, Mr M complained to AFS that he had no recollection of its adviser warning him about this. He said the bond hadn't been a suitable investment for him and that AFS had failed to properly consider that he was a higher rate taxpayer with no plans to retire. In particular, he was unhappy that AFS hadn't recommended that he invest in an ISA and an Investment Account given that it understood that tax efficiency was an important objective for Mr M.

In its final response letter, AFS said:

- it was fully aware that Mr M was a higher rate taxpayer and that the timing of his retirement was undecided. AFS said this was why, exceptionally, it carried out 13 reviews on Mr M's behalf between December 2015 and April 2017, to enable him to keep the valuation of his pension portfolio under constant review as he had a target figure in mind.

- Mr M had told AFS he had used his annual ISA allowance already that year so taking out another ISA wasn't an option when he spoke with the adviser in 2016.

- Mr M's attitude towards volatility was paramount and he had wanted a 'smooth' fund (one which reduced the impact of pricing fluctuations to provide more stable performance). For this reason, AFS had discounted unit trusts.

- AFS was very clear that Mr M had said this money was specifically to provide financial security in retirement. The bond was a very suitable investment for someone who is a higher rate taxpayer whilst working but likely to be a basic rate taxpayer in retirement (which seemed to be the scenario Mr M thought likely).

- The investment was never designed to be cashed in in its entirety whilst Mr M was still working.

- Rather than providing an annual review AFS monitored the whole of Mr M's portfolio on a very regular basis and was in constant contact with him to discuss market movements and the performance of his portfolio. It had already discounted its initial fee and provided full value for the fees charged so it wasn't prepared to pay any refund.

Mr M wasn't happy with this response so he brought his complaint to us. One of our investigators looked into what happened.

Our investigator didn't recommend that the complaint should be upheld. She thought that the bond had met Mr M's agreed objectives and attitude to risk and that the tax implications were explained at the outset. Whilst our investigator said she appreciated that Mr M had told her it was never his intention to retire, this wasn't what was recorded at the time of the sale (which reflected only that he was uncertain about the exact retirement date).

So our investigator didn't suggest that AFS needed to do anything to put things right.

Mr M didn't agree.

In summary, he mainly said that:

- details were incorrectly recorded by the adviser at the time.
- It was clear that he was a higher rate taxpayer with no retirement date in mind – and he would remain a higher rate taxpayer if he didn't retire – this made a bond unsuitable for him.
- He was still in work and hadn't retired.
- Any chance of him remaining a higher rate taxpayer should have prompted discussion of an Open Ended Investment Company (OEIC) instead - put simply, a different wrapper that would have been much more suitable for him.
- At the very least, his tax position ought to have prompted a thorough discussion on which option was best, presenting pluses and minuses. Instead, AFS simply discounted all other options.
- An investment in an OEIC would have saved Mr M a substantial sum in tax and he could have utilised his ISA every year from the OEIC.
- He disputes he was given proper tax advice.
- AFS didn't take into account Mr M's overall financial situation - had it done so, it would have realised this could impact on whether he is likely to be a long term high rate taxpayer and so affected the suitability of the advice.

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.

Having thought about everything I've seen and been told, I've independently reached the same conclusions as our investigator. I'll explain why I say this.

There’s information on our website which explains the Financial Ombudsman Service approach. It wouldn’t be reasonable to expect Mr M to recall word for word discussions that took place so long ago. So, in coming to my decision, I have relied not only on what Mr M has told me, but also the point of sale paperwork that AFS has provided.

Where facts aren’t agreed by the parties involved, I must base my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances. I must make reasonable assumptions where necessary. And I must be impartial.

There’s only limited information about the details of Mr M’s monthly expenditure but he told the adviser that he had around £3,000 disposable income left each month out of net income of just over £5,000. He owned his own home and had no debts. He had pension provision in place and other investments as well as £5-£10,000 already put aside to cover any unforeseen emergencies. . Mr M explained that he was looking to invest around £318,000 which was at that time in a bank account.

I think it's fair to say that Mr M was in a secure financial situation with ample surplus cash savings and in a position to absorb some potential loss without this impacting on his day to day living standards.

So I think he was comfortably able to afford this £314,791.29 investment.

I’ve gone onto think about whether the investment bond was suitable for Mr M’s needs.

He wanted to earn a greater return than his cash savings were earning on deposit. And he didn’t require any income from his investment in the short to medium term. He was looking to invest for the medium term and for at least five years. Given these objectives, I think it was reasonable to recommend a risk-based investment to Mr M.

The Attitude to Risk Questionnaire AFS completed with Mr M shows there was some detailed discussion about the level of risk Mr M was prepared to take with his investment and I find Mr M was prepared to take a cautious approach.

AFS recommended an Investment Bond to Mr M because it said it provided the potential for capital growth over the medium to long term and could also provide a regular income. It explained that the bond allowed Mr N the possibility of withdrawing 5% a year of the original sum over 20 years without giving rise to an immediate income tax charge. With careful planning, AFS told Mr M that it would be possible for him to defer and perhaps avoid any additional income tax on encashment.

AFS identified and advised Mr M to invest in a fund available under the bond that was rated as cautious.

All in all, I find the investment bond reasonably reflected Mr M’s agreed objectives and risk attitude.

I don’t think AFS could reasonably have anticipated the impact of Covid 19 on the value of investments - the dramatic fall in the markets was unforeseen and its impact on fund values was significant. This seems to have prompted Mr M to encash his bond. And whilst I completely understand why he felt this was a way to stem his losses at the time, I must also keep in mind that it was entirely his choice to cash in the bond earlier than it seems he ever intended or suggested to AFS that he might want to.

As Mr M was no longer using AFS as his adviser by this time, it was not asked to provide an opinion about whether it would be appropriate to cash the bond in.

When recommending this investment bond to Mr M, the adviser's report included the following:

"*As this is an investment bond there may be an income tax liability on full or partial encashment of your investment. Top slicing procedures are done on any chargeable event and dependent upon you the marginal rate of tax you are paying at the time of encashment there may be a tax liability.*

Currently you will be looking to take withdrawals when in retirement and potentially a basic rate taxpayer. When taking any withdrawals please contact me."

I find that AFS made it reasonably clear to Mr M that he faced potential tax consequences on encashment. And based on the circumstances in this case, my view is that it would not be fair to hold AFS responsible for the adverse tax consequences of Mr M's actions when he decided, unexpectedly, to encash his bond.

AFS has also said that if Mr M had asked its advice before encashing his bond when he did, it would have advised him to '*sit tight as the investment will recover'* (which is what happened). It said if he had needed some monies it would have advised on how much he could take in a tax efficient manner taking into consideration that he had not retired and was still working. And if he needed income, AFS would have informed him how much could be taken in a tax efficient manner.

Overall, and based on Mr M's circumstances as recorded at the time, I don't think AFS' investment advice was unsuitable. I think it was suitable.

In coming to my decision, I've thought carefully about everything Mr M has said, including his comments made in response to the investigator's view. But nothing he's said affects my view on the outcome of this complaint.

Although I think it was apparent that Mr M had no specific retirement date in mind, it does look as if the subject of retirement was regularly discussed and I think it was reasonable for AFS to have based its advice on an understanding that Mr M did intend to retire from full time paid work when the time was right. He had identified various criteria that would need to be met and his main reason for seeking advice seems to have been financial planning for his retirement. I appreciate Mr M had options open - he could chose at some point to crystallise some of his other investments and remain a higher rate taxpayer or he might ultimately decide not to retire. But I think he had ample opportunity over the course of three separate meetings with the adviser to explore those options if he considered they were likely courses of action. As far as I can see, AFS properly based its advice on what Mr M told AFS about his plans and objectives at the time.

Although Mr M now feels, with the benefit of hindsight, that an OEIC investment would have avoided some of the adverse tax consequences he faced, it doesn't mean the investment bond was unsuitable at the time. I think that Mr M understood and accepted the risk of the fund that AFS advised him to invest in. If he hadn't understood the risk or he wasn't prepared to take that sort of risk, he would've been aware that there were other safer options for his savings. The investment bond seems to me to have fitted his needs and savings goals and it matched his expectations of a potentially tax efficient way to plan for a future he envisaged at the time.

And the fact alone that the Fact Find document incorrectly described Mr M's marital status isn't a reason for me to think that none of the other information recorded in the Fact Find is dependable. As far as I can see, in all main respects the Fact Find accurately reflects the information recorded in the Attitude to Risk Questionnaire – which included detailed questions designed to capture, test and double-check the information Mr M was providing. So this error makes no difference to the suitability of the advice AFS provided to Mr M and it's not a reason for me to uphold his complaint.

To sum up, I think this particular investment suited the level of risk Mr M was prepared to take to improve the likelihood of a return on his investment, it offered the potential for capital growth he hoped for and it matched his savings goals and uncertain timescale at the time in a potentially tax efficient way.

I'm aware that Mr M has mentioned a number of points of concern during the course of this complaint. I have concentrated on what I consider to be the main points that affect the outcome of his complaint. If I haven't commented on everything Mr M has said during the course of this complaint, that's because I don't feel there's anything more I can usefully add to what has already been said by the investigator. But I hope that setting things out as I have done helps to explain how I've reached my conclusions and that Mr M will at least feel that his complaints have been given serious consideration even if this isn't the decision he was hoping for.

My final decision

For the reasons I've explained, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 28 September 2022.

Susan Webb
Ombudsman