

## **The complaint**

The estate of Mr E (“the estate”) complains that LEBC Group Limited (“LEBC”) asked Mr E to complete the wrong paperwork in relation to an investment, resulting in him being left without life cover.

## **What happened**

The late Mr E took investment advice from LEBC in early 2019. Mr E wanted to review his assets and inheritance tax (IHT) liability following the death of his wife. Mr E had sadly been diagnosed with a serious illness and told his life expectancy was 20 months.

LEBC made a number of recommendations to Mr E. One of them was to invest £600,000 in an “Accelerated Inheritance Tax Solution (AITS)” product with a third party provider who I will refer to as company A.

The AITS was intended to reduce Mr E’s IHT liability if held for two years. The recommended product also included immediate life insurance cover for the first two years of the investment which was intended to mitigate the impact of IHT if Mr E died during that period. The insurance proceeds would be equal to 40% of the net investment amount.

Mr E completed an application which LEBC sent on to company A and his funds were invested on 29 May 2019.

Mr E sadly passed away in 2020. The estate later found that Mr E’s funds had not been invested in the AITS that LEBC had recommended. Instead, Mr E had completed an application form for an another ‘inheritance tax solution’ product which was similar but did not include life insurance cover.

The estate complained that LEBC were responsible for Mr E’s funds being invested in the wrong product. It said that LEBC’s error had caused a loss to the estate of £234,000, which is the sum that a life policy would have paid out.

In response to the estate’s complaint LEBC said that company A were responsible for providing the wrong application form and the wrong product being arranged for Mr E. They said company A were aware of the intention to arrange an AITS product and a member of their staff checked the application and confirmed it would be accepted. Although company A told LEBC that the AITS application forms had been updated, they said it would not be necessary to complete an updated form for Mr E as long as his application was accepted by 26 April 2019.

Our investigator looked into the estate’s complaint and thought it should be upheld. In summary, her findings were:

- LEBC had an obligation to follow the principles for businesses in the Financial Conduct Authority handbook. When they signed Mr E’s application form in March 2019, they confirmed they had made checks in relation to “customer due diligence, suitability of the

investment and motive of the applicant”.

- The application that Mr E completed and LEBC signed was not for the recommended AITS product. That would have been clear to the adviser as sections 3-5 regarding insurance were missing on the form.
- LEBC said company A gave them the wrong forms. However, company A had also sent the correct forms and they sent new forms on 23 April 2019 which was prior to the submission of Mr E's application. LEBC therefore had more than one opportunity to notice and correct the mistake before it was committed to.
- If the correct paperwork had been submitted to company A, Mr E's investment would have included life cover equivalent to 40% of the amount invested.
- The life policy would have been subject to exclusions and if LEBC thought one of the exclusions would have applied in Mr E's case they could provide evidence to support that. Otherwise, they should pay the estate the amount that would have been paid in life cover, less the difference in fees that would have been charged for the AITS product. They should also pay £750 for the distress and inconvenience caused.

The estate agreed with our investigator's findings. LEBC disagreed and said:

- They do not feel they can be held accountable for incorrect information provided to them by company A. When they queried it with company A, they were clearly told the old application would be acceptable if it was received before 26 April 2019, which it was.
- As the application was received by that date, they were satisfied the correct product had been applied for. Therefore, they did act with due skill, care and diligence.
- They were mindful that Mr E had recently been bereaved and was in poor health, and they did not wish to cause him undue stress by asking for a new application to be completed at short notice – especially as the adviser had been told it was unnecessary.
- They believe company A is responsible for the failing.

As LEBC disagree with our investigator, the complaint has been passed to an ombudsman for a final decision.

### **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.

It's not in dispute that the product LEBC recommended to Mr E was the AITS. The 'estate planning report' that LEBC presented to Mr E on 12 March 2019 recommended that he should invest £600,000 to reduce his IHT liability. It said the recommended AITS also offered life cover of 40% of the invested amount within the first two years.

The report also recommended that Mr E should thoroughly read the terms and conditions of the AITS. It said the application forms included a declaration that the applicant had no knowledge he was suffering from a terminal illness, which was defined in part as an illness expected to lead to death within 12 months (including where 12 months was the minimum estimate of a range). The report said that as Mr E had recently been given a life expectancy

of 20 months, he should not be excluded from the life cover on the grounds of terminal illness.

It seems that Mr E accepted LEBC's advice and completed an application form, which he signed on 29 March 2019. An LEBC adviser also signed the form on the same day confirming that the investment was suitable for Mr E. However, the application form was for another product offered by company A, which provided the inheritance tax benefits without the associated life cover. I note that company A had previously provided LEBC with forms and quotes for both the AITS and the other product.

I've seen no evidence that between receiving advice from LEBC and signing the form Mr E had decided to apply for a different product. I think he most likely thought he was completing the correct form for the product he had been advised to invest in. And given that the form he completed was for a similar product offered by the same company, I don't think it would have been reasonable to expect Mr E to realise that there was anything wrong.

As Mr E's advisers, I think LEBC were responsible for making sure he completed the appropriate form for the product they had recommended to him. The application form Mr E completed was signed by the adviser who had presented the estate planning report to him. It is clear from that report that she was aware the AITS form contained a life policy declaration. The form Mr E signed didn't include a declaration, and there were also other differences between the two forms. I think the adviser should have been aware of that and should have ensured Mr E completed the correct application form.

LEBC sent Mr E's application form to company A on 23 April 2019, once Mr E had made the funds available for his investment. I have been provided with copies of several emails and phone recordings from that date between LEBC and company A. I've considered these carefully as LEBC believe they provide evidence that they should not be held responsible for Mr E investing in the wrong product.

It appears that company A emailed LEBC a copy of their updated AITS application form (dated February 2019) and investor guide at midday on 23 April 2019. Company A referred to a recent conversation with LEBC about Mr E's 'AITS application'. LEBC replied to say they had received the cheque for Mr E's funds that day and were going to send his application form, but it was the October 2018 version of the form and they wanted to check if that would be acceptable.

During a phone conversation, company A's representative said they would accept the October 2018 version of the application form provided it was approved by 26 April 2019. He also offered to check the form had been completed correctly to avoid any delays and confirmed that it had been.

I'm not looking in this decision at the actions of company A. But having taken account of the emails and calls from 23 April 2019, as well as the other evidence I've seen, I'm satisfied that LEBC were responsible for Mr E investing in the wrong product.

As I've discussed above, LEBC were responsible for giving advice to Mr E on which products were suitable for his needs. They should have ensured that Mr E completed the correct application form. Prior to submitting the form that Mr E had completed, LEBC received an updated version of the AITS application form from company A, which provided a further opportunity for them to realise their mistake.

The older application form that company A said they were prepared to accept, and which had been correctly completed, was for a different product to the one that Mr E had been advised to take out. As his adviser, it was the responsibility of LEBC to make sure the right

form had been completed and submitted, even if that meant Mr E would have to complete a new form.

Having concluded that LEBC were responsible for Mr E submitting the wrong application form, I now need to decide what they should do to put things right. In doing so, I will consider what I think would most likely have happened if Mr E had been given the correct application form to complete.

As I've noted above, the AITS application form included additional sections on the life policy. Mr E would have been asked to agree to a declaration that he was not suffering from a terminal illness, as defined by the policy. Based on what Mr E told LEBC at the time, I think it is most likely he would have agreed to the declaration and completed the application form. And I think an AITS investment, with life cover, would have been set up for him.

Following Mr E's death, it would have been the responsibility of the insurer to consider a claim under the life cover. I note that the policy provided for the insurer to access Mr E's medical records as necessary to adjudicate any claim. Although I can't be sure that a claim on Mr E's policy would have been successful, I've seen no evidence that it would not have been. So, I think it is more likely than not that a claim on Mr E's policy would have been successful and that it would have paid out the agreed sum.

Under the terms of the life cover, once the insurer had paid a claim, company A would have paid the proceeds to Mr E's beneficiaries, taking into account the expression of wishes he would have made at the time of application. In the circumstances, I think it would be fair and reasonable for redress to be paid to the estate.

### **Putting things right**

LEBC were responsible for Mr E submitting the wrong application form on 23 April 2019 and his funds being invested in the wrong product on 29 May 2019. But for LEBC's mistake, I think Mr E would have invested £600,000 in an AITS, with life cover. I think it would be fair and reasonable for LEBC to pay redress to the estate equivalent to the amount that a successful life cover claim would have paid out.

Where I uphold a complaint for acts or omissions which took place on or after 1 April 2019 – which is the case here - I can make a money award requiring a financial business to pay compensation of up to £355,000, plus any interest and/or costs that I consider appropriate.

To put things right, LEBC should:

- Pay the estate 40% of the net amount Mr E would have invested in an AITS. That is what a successful claim would have paid out.
- Calculate the additional fees that Mr E would have had to pay for the AITS over and above the fees he paid for the product he invested in instead. They can deduct this amount from the redress payable.
- Add 8% simple interest per year on the amount payable from 1 January 2021 to the date of settlement. I can't be sure how long it would have taken for a claim on the life cover to be processed, but given that Mr E passed away in June 2020, I think it is reasonable for interest to be paid from 1 January 2021. I think a rate of 8% is appropriate to reflect the cost of the estate being deprived of the use of the funds for that period.
- Provide details of their calculations to the estate in a clear, simple format.

The estate may want to get advice on the tax implications of this award.

I won't be making an award for distress and inconvenience. I appreciate that this matter has caused distress to members of Mr E's family. However, under the rules governing our service, we can only tell a business to pay compensation for distress and inconvenience experienced by their customer (Mr E), not by a third party. So, we can't award compensation for distress and inconvenience to executors who have brought a complaint on behalf of an estate.

### **My final decision**

For the reasons I've explained, my final decision is that I uphold the estate of Mr E's complaint against LEBC Group Limited.

LEBC Group Limited should pay compensation as set out above to the estate of Mr E.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr E to accept or reject my decision before 7 March 2023.

Matthew Young  
**Ombudsman**