

The complaint

Mrs P, together with the trustees of the P Trust, complain that Sound Financial Management Ltd (SFM) gave unsuitable advice to surrender Mrs P's investment bonds which caused her tax issues.

For ease, I've referred to Mrs P or her representative throughout.

What happened

Mrs P sought advice from SFM to mitigate her potential inheritance tax liability (IHT) in 2016. SFM advised her to surrender two investment bonds and invest the proceeds into an investment bond and a Flexible Investment Plan – both of these were to be placed into Discounted Gift Trusts (DGT).

In 2020, Mrs P's representative complained after Mrs P received a bill from HMRC due to the surrender of the bonds. Mrs P said that she was advised to surrender both bonds at the same time and SFM hadn't told her about the additional tax she'd have to pay because the bonds realised a chargeable gain. Because of this, she faced a penalty fine as well as a bill for over £20,000 of tax she hadn't paid due to the gain.

Mrs P says that SFM ought to have advised her to surrender the bonds gradually to ensure she was under the higher rate threshold for income tax. And that it had been negligent with its advice which has caused her a direct loss.

I sent my provisional decision upholding this complaint on 5 October 2022. I said that whilst the advice to invest into a DGT was suitable, SFM gave incorrect information to Mrs P about her tax liability which had led to a penalty. The relevant extract from my provisional decision (which forms part of this decision) is below.

Tax charges

The crux of this complaint is about the penalty and tax charge Mrs P incurred when she encashed two investment bonds as a result of this advice. The advice was to invest the proceeds into plans utilising DGTs to mitigate Mrs P's potential IHT liability. It isn't disputed that there was a potential IHT liability at the time she received advice.

When SFM gave the advice, the adviser calculated that, due to top slicing relief, Mrs P wouldn't have to pay any additional tax on the gain she received from the two investment bonds. He went as far as saying that the top sliced gain would be added to her income and she'd remain under the higher rate threshold for the year, therefore no further tax is payable. But, SFM's calculation at the time didn't add the whole gain to Mrs P's income for the year, didn't run through the complex actual calculation for top slice relief and didn't use the correct level of income for her for that year. So, mistakes were made.

SFM has since sent in another calculation from a third party to show the additional tax liability would've been around £5,000. This is different from the information Mrs P's

accountant has sent in which shows it to be around £20,000. Either way, Mrs P would've incurred an income tax charge for surrendering the bonds and she was told the opposite.

I'm not a forensic accountant, and I can't say which of the calculations I've received is accurate, but I don't think I need to. I'm satisfied that Mrs P ought to have been told that surrendering her bonds would've created a tax charge so I need to determine what she'd have done if she'd been told this.

The advice

Mrs P's representative says that SFM should've advised Mrs P to surrender her bonds over a number of years, ensuring her yearly income didn't go above the basic rate allowance. I've thought about this carefully and my role here isn't to think about what the most suitable advice would've been with the benefit of hindsight but rather to determine if the advice SFM gave Mrs P was suitable for her circumstances.

Mrs P's objectives when she sought advice from SFM was to find ways to mitigate her potential IHT liability. It's clear from the documents from the point of sale that different trust options were discussed but that it was settled that a DGT would be the best option as it ensured the full amount invested would fall outside of her estate after seven years and there was a potential for an immediate discount. As Mrs P's objective was to place money into trust, I don't think it's likely that surrendering her bond over time, as her representative suggested, would have met this. The advice allowed Mrs P to place funds outside of her estate with the potential to take an income and for there to be an amount to fall immediately outside of her estate (the discount) subject to actuarial calculations. Having looked at Mrs P's circumstances and objectives, I can't see this advice was unsuitable. DGTs aren't designed to take additional contributions, so if Mrs P only gradually surrendered her bonds, the amount would take longer to fall outside of her estate.

The issue is that SFM didn't tell Mrs P that the gain she received when she surrendered her bond would give rise to an income tax liability. But, I think the advice was still suitable, and given Mrs P's objectives I don't think it's likely she'd have done something differently had she been given correct information about the income tax liability she'd face. To achieve the IHT mitigation she needed, she'd likely have had to pay something to place the sums she had in the bonds into a trust to fall outside of her estate.

Has SFM caused a loss?

SFM has maintained that it isn't responsible for any of Mrs P's tax liability or losses. It has said that the responsibility was entirely hers. I disagree. I can see Mrs P was asked to check figures with her accountant but given SFM was giving her advice to mitigate a potential tax liability, albeit IHT, I'd expect her to trust what it was telling her. And it told her very certainly that no additional income tax liability would be incurred.

I've concluded that she'd likely have gone ahead with the advice had she been told the correct information, so she'd still be liable for the amount of tax that is due to HMRC for the surrender of her bonds. But she'd likely have paid that as part of her tax return for that year, rather than incur a penalty and interest. SFM made errors, it didn't calculate her income correctly, or her potential liability on the gain from surrendering her bonds. And if it expected Mrs P to get her accountant to carry out those calculations, it shouldn't have attempted to do it and give her incorrect information.

I think it's likely Mrs P only incurred a late penalty and interest on her tax due because of SFM's mistake, and so it follows that I think SFM ought to compensate her for this.

Trouble and upset

Aside from the actual financial loss Mrs P has suffered as a result of SFM's mistakes she has suffered considerable trouble and upset. She was sent a warning from HMRC and told she owed money for which the potential penalty is high. I think this would've come as a significant shock, which could've been avoided if SFM had either carried out correct calculations or told Mrs P that it didn't know about any of the potential tax charges on surrender. As such, I think it needs to pay Mrs P £350 to compensate for the trouble and upset she experienced as a result of its errors.

Putting things right

Subject to any additional evidence I receive I intend to direct Sound Financial Management Ltd to do the following:

- *Upon receipt of evidence, pay Mrs P any penalty charge and interest she has had to pay to HMRC as a result of not declaring the chargeable gain as part of her tax return in 2016/17.*
- *To this amount add 8% simple interest* per annum from the date Mrs P paid HMRC to the date of settlement.*
- *Pay Mrs P £350 compensation for the trouble and upset caused.*

Responses to the provisional decision

SFM responded to say it had no further comments to make. Mrs P's representative disagreed with the provisional decision. In summary it said:

- Mrs P's objective was to reduce her IHT liability. That objective did not include increasing her liability to Capital Gains Tax (CGT).
- The advice wasn't fit for Mrs P's circumstances as the advice in respect to top slicing relief was wrong.
- Mrs P wouldn't have taken the advice had she been made aware of her liability to CGT.
- If the Ombudsman finds that SFM's advice was wrong then it follows that Mrs P's loss should be properly compensated. The Ombudsman shouldn't second guess what Mrs P might have done.
- Mrs P feels the Ombudsman should make an award of costs, in particular in respect of accountant fees.
- Mrs P wants the Ombudsman to award:
 - o £23,068.51 plus interest at 8% per annum from 10 April 2019
 - o £350 compensation
 - o £3,204 for accountant's fees

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.

Neither party has provided any additional evidence that persuades me to reach a different outcome to my provisional decision. For completeness I'll respond to Mrs P's submissions in summary.

I concluded that the advice Mrs P received was suitable for her objectives of mitigating IHT, and just because this generated a chargeable gain, liable to tax, didn't make the advice unsuitable. I've not seen anything else to suggest that the whole advice was unsuitable. But I did conclude that SFM ought to have told Mrs P about the potential tax liability.

I appreciate Mrs P's representative doesn't think I should make a finding as to what Mrs P might have done had SFM not given incorrect information, but this is part of my role. I need to conclude what position Mrs P is likely to be in had the error not occurred. I explained in my provisional decision why I thought she'd still have gone ahead with the advice and my decision remains the same - the advice met her objectives which was to reduce her IHT liability. I've not seen anything to suggest she wouldn't have gone ahead with the advice, and Mrs P's representative's idea that she'd have surrendered the bond gradually wouldn't have matched with her objectives at the time.

Mrs P has asked for her accountant's fees to be paid. I can see she instructed her accountant to calculate losses and tax charges, this is something it appears she'd have always paid for and I don't consider it fair to ask SFM to pay for these costs. Mrs P mentioned in her complaint that she had an accountant and it appears this was something she'd likely pay out for given her sources of income and that she said she'd consult her accountant at the time of advice. I do appreciate that Mrs P asked her accountant to provide evidence as part of this complaint. This was in response to this service asking her to explain why her calculations were the correct ones to use (in relation to top slicing relief) rather than SFM's. It was Mrs P's choice to get this explanation from her accountant. So, I don't think it would be reasonable to ask SFM to reimburse these costs.

Overall, I think SFM gave incorrect information to Mrs P about her tax liability following the surrender of her bonds. I don't think the correct information would've meant Mrs P acted differently, but I do think that she's incurred trouble and upset because of it, as well as a potential penalty for not declaring it to HMRC on time.

I appreciate this will be disappointing to Mrs P, who has asked for the full tax liability back in addition to an award for costs. However if Mrs P wishes to pursue this matter further she can reject this decision and look at legal proceedings.

Putting things right

Sound Financial Management Ltd must do the following:

- Upon receipt of evidence, pay Mrs P any penalty charge and interest she has had to pay to HMRC as a result of not declaring the chargeable gain as part of her tax return in 2016/17.
- To this amount add 8% simple interest* per annum from the date Mrs P paid HMRC to the date of settlement.
- Pay Mrs P £350 compensation for the trouble and upset caused.

*If Sound Financial Management Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs P how much it's taken off. It should also give Mrs P a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons I've explained I uphold this complaint and direct Sound Financial Management Ltd to carry out the instructions I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P, Mrs M and Mrs S as trustees of the P Trust to accept or reject my decision before 2 December 2022.

Charlotte Wilson
Ombudsman