

## **The complaint**

Mr and Mrs S complain that Argentis Financial Management Limited didn't explain how income tax will apply to money they're to receive from a bond held in a discounted gift trust.

## **What happened**

Mr and Mrs S set up the bond and trust following advice from Argentis in 2007. We've seen the recommendation letter Argentis wrote at the time. And we've got copies of the trust deed that was completed. The time that's passed seems to mean any other records are now lost.

As part of the trust, Mr and Mrs S received monthly payments. The value of the payments was fixed at the outset. They're funded by withdrawals from the bond. Each year, the payments total 5% of the amount initially invested in the bond. That makes use of a tax-deferred allowance that applies to bonds.

Mr and Mrs S complained in 2021. They realised more fully how the tax-deferred allowance worked. They now appreciated that by 2027 – when the 5% withdrawn from the bond each year would total to 100% of what had been initially invested – they'd have to start paying income tax on the money they received from the trust. Given Mr and Mrs S's other income, they felt this was likely to be at the higher tax rate.

In response, Argentis said that they weren't authorised to give tax advice, and noted the trust document had advised Mr and Mrs S to seek legal and taxation advice prior to investing.

Unhappy with that response, Mr and Mrs S came to us. I wrote last time how I intended to uphold this complaint. I couldn't see Argentis had explained what would happen with income tax if withdrawals reached 100% of the amount initially invested. And I couldn't see they'd made it clear they were relying on Mr and Mrs S seeking separate tax advice.

To put things right, I was minded to have Argentis compensate Mr and Mrs S for the unwelcome surprise they've had now they fully understand what could happen. But the uncertainty about exactly what will happen – and how that differs to the way things would have been if the service had been better – stopped me from proposing any more action.

Argentis said they would accept that decision. But Mr and Mrs S raised some further points they felt supported their position. They said the possibility to set annual withdrawals at less than 5% wasn't discussed. And they questioned the adviser's motives in recommending this investment. They questioned how I could conclude they'd probably have proceeded with the bond too, noting they could have gifted the money instead to avoid incurring inheritance tax.

The case has now returned to me 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.

Having done so, I've decided my previous decision was the right one for this case. So I'm

largely going to repeat what I wrote last time. But I'll add to it in places to show why the comments from Mr and Mrs S haven't changed my view.

Key here remains Argentis's 2007 letter to Mr and Mrs S. It's the only indication from the time of what Argentis said to Mr and Mrs S prior to the bond and trust being set up.

The letter notes Mr and Mrs S '...were concerned about Inheritance Tax planning, and [were] also mindful that any income extracted from [their] investments should be done in a tax efficient manner.' It then went on to talk about discounted gift trusts, from the view of reducing inheritance tax.

A discounted gift trust met that need better than simply gifting the money. It would have provided an immediate inheritance tax benefit without the more standard 7-year wait. And it meant Mr and Mrs S still got to have the benefit of the money while they were alive, through the withdrawals they received.

While I can appreciate Argentis aren't regulated to give tax or trust advice, tax was a key part of the discussion about investments that took place in 2007. For example, page three of the letter begins with the title 'What about tax?', before discussing the inheritance tax benefits of the trust that would hold the investment.

So I find providing relevant information about tax and the trust was part of the financial activity Argentis are regulated for – providing investment advice. If Argentis were relying on Mr and Mrs S seeking other tax or legal advice, that should have been made more explicit in the 2007 letter.

The key tax for this complaint wasn't the inheritance tax that the trust sought to manage. It was the income tax that would be charged on the bond's gains.

The letter had hints about that. On the first page it talked about tax being payable if the '...regular withdrawals exceed 5% each policy year of the original amount invested...' But I can see how that could be read as saying as long as the withdrawals stayed below 5% each year, they could continue forever without paying tax, regardless of the cumulative value.

That's not how the tax-deferred allowance works. Once the withdrawals total 100% of what was invested, the rest will be treated as the investment's gain and taxed accordingly.

Looking at Argentis's letter, I provisionally find this part of the tax-deferred allowance isn't explained. As there's no evidence of it being explained and drawn to Mr and Mrs S's attention, I accept Mr and Mrs S's position that it wasn't.

I don't however accept that they weren't told the level of withdrawals could be changed. The letter mentioned in a few different places that they could choose the level of the withdrawals. For example, page two said '...you must choose the level of income you wish to receive... once the income level has been chosen, this cannot be altered.' That's a key point of the trust here, and its mention in the letter satisfies me Argentis brought it up.

However, given Argentis failed to give Mr and Mrs S full information about how tax would apply to their bond, or to say that their advice wasn't going to include information about that subject, I've decided to uphold this complaint.

### **Putting things right**

The reasoning behind my remedy remains focussed on thinking about the position Mr and Mrs S would have been in if the service had been more reasonable.

With a better explanation from Argentis, Mr and Mrs S would have been aware before setting up the bond and the trust that income tax could be payable on the bond's gains after 20 years, if it was set up with withdrawals totalling 5% each year.

It's possible Mr and Mrs S could then have chosen not to make the investment. But I consider that unlikely.

There appears to have been a benefit to trying to reduce their inheritance tax liability without completely losing the use of their money for an income. That benefit seems likely to have outweighed the potential for a tax liability to be incurred on any gains their assets achieved. And doing something else with the money wouldn't necessarily have been free of a tax liability on any gains it made.

That leads me away from having Argentis refund any of the fees that arose from their 2007 advice. The advice generally was reasonable, as it considered Mr and Mrs S's wishes and put forward an investment that went a long way towards meeting them. I appreciate Mr and Mrs S feel Argentis would have known the income tax could become an issue in 20 years. But they were probably also aware that other options for investing the money could attract a tax liability at some point. So I can understand why the potential for a tax bill wasn't a major factor in their advice.

Mr and Mrs S could perhaps though have reduced the size of the withdrawals they planned to receive from the trust. At 4% for example, the income they received would have been reduced but it would have been 25 years before tax had to be paid. But as I've noted, the ability to choose this value was discussed at the time. I don't have any details of their circumstances to explain why the 5% level was chosen. So I can't really say if this would have been an option for them, had Mr and Mrs S fully appreciated what would happen once the full amount invested was withdrawn.

Looking at the position Mr and Mrs S are now in, it's worth noting the tax they're concerned about is a possibility, rather than a certainty. They first have to receive the full value that's been invested, which can't happen for a few more years yet.

If Mr and Mrs S don't end up incurring a tax liability, they'll be in the same position they'd have been in if the service had been reasonable and they'd taken some steps to avoid it. That is, the tax on the investment's gains would likely fall on the trust or its beneficiaries to pay. It's the comparison to that tax position that's important, if Mr and Mrs S do end up paying tax they could otherwise have avoided.

Determining the tax position of the trust or its beneficiaries isn't possible from the details in front of me. And even if I could, the uncertainty around whether tax will be payable by Mr and Mrs S leads me to conclude that attempting a comparison is unsound.

So I've decided not to direct Argentis to cover any financial loss for Mr and Mrs S. I can't be sure there'll be one, or what it would be if there was.

Instead, I find that the impact Argentis should remedy here is the unwelcome surprise Mr and Mrs S have experienced. And they should acknowledge the uncertainty that now exists about whether things could have been done better in 2007.

A compensation payment will acknowledge those impacts. In line with our current published approach, I've decided a payment of £600 from Argentis to Mr and Mrs S is suitable. That factors in that the issue here has left Mr and Mrs S feeling they've overpaid Argentis for their work. And that the tax here may still have arisen for either Mr and Mrs S or the trust or its beneficiaries at some point, even with a reasonable level of service provided.

**My final decision**

I've decided to uphold Mr and Mrs S's complaint about Argentis Financial Management Limited. I direct they pay Mr and Mrs S £600 compensation to acknowledge the emotional impact caused for them.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S and Mr S to accept or reject my decision before 18 April 2023.

Paul Mellor  
**Ombudsman**