

The complaint

Mr A complains about Coutts & Company's decision to make changes to the status of his investments in two Multi-Asset Funds. He says the changes have a material adverse effect on him due to his residency status as a UK non-domicile (UK non-dom).

What happened

From October 2020 to February 2022, through advice given by Coutts, Mr A invested in two mutual funds (the "CMAFs") managed by Coutts, the GBP Coutts Multi-Asset Fund (the "GBP CMAT") and the USD Coutts Multi-Asset Fund (the "USD CMAF"). As part of the initial advice Mr A invested in £250,000 in the GBP CMAT and \$350,000 USD CMAF. In total he invested £250,000 in the GBP CMAT and \$1,250,000 in the USD CMAF.

In July 2022, Coutts informed Mr A the CMAFs will be changing their residency status from Ireland to the United Kingdom (the "Reorganisation"). He received confirmation of this and was told the change would take place on 7 October 2022 for the GBP CMAF and 28 October 2022 for the USDCMAF. As the Reorganisation had potential tax implications for Mr A, Coutts recommended he redeem his units in the CMAFs and re-invest the proceeds into a new Coutts' discretionary portfolio based in Jersey.

In August 2022, Mr A raised a complaint. He was unhappy that the proposed change in status of the CMAFs impacted his tax position as a UK non-dom. He intended to invest over the longer term and withstand short term fluctuations, so having to encash his investment soon after investing would mean realising a crystallised loss which is something he never intended to. He said the funds were mis-sold to him as Coutts must have known about the Reorganisation before it advised him. He was also unhappy about the short window given for him to redeem and restructure his investments. He said Coutts's actions have impacted him financially and has tax implications for him.

As Mr A didn't receive a response within the expected timeframe, he referred his complaint to this service. But in October 2022, Coutts did provide a response, albeit later than required. In summary it said:

- The original investment recommendations that were made by its advisor were done so without any prior knowledge of the proposed changes to the domicile of the CMAFs.
- It acknowledges Mr A's concerns around crystallising losses within his portfolio at a time of market volatility, but it would expect that by reinvesting the monies in a similar way and at the same risk profile he should expect to benefit from a market recovery in the same way as if he continued to hold funds in the CMAFs.
- In respect of the tax consequences Mr A has mentioned, it offered to waive its standard advice fee for any review Coutts completes with him in respect of advice related to changes in tax status. It also arranged to credit Mr A's Coutts account with £891 to cover the invoice issued by his tax adviser due to the Reorganisation of his Coutts investments. It also said it would consider any additional costs Mr A has

occurred due to the situation.

Mr A remained unhappy, so he asked us to complete an independent review of the complaint.

Since the complaint was referred to this service, Coutts has provided Mr A with subsequent advice regarding the reinvestment of the funds. It was recommended that he encash and reinvest into a Jersey Discretionary Portfolio to keep the funds offshore. He did accept this advice, and in November 2022, the money was reinvested in line with Coutts's recommendation.

One of our investigators looked into the circumstances. He didn't uphold the complaint. In summary he said:

- He didn't find there was evidence that suggests Coutts knew that the funds would be brought onshore at the time it advised Mr A in 2020. So this couldn't be taken into account as part of the advice. The advice that was given matched Mr A's objectives at the time.
- The offer made by Coutts is reasonable in that it has covered all the additional costs, such as advice fees, that arose because of its decision to make these changes. It also offered to put Mr A into a new portfolio which matched his objective of having its domicile offshore and with a similar investment strategy to the ceding scheme.
- In respect of the notice given to Mr A about the changes to the funds. He acknowledged that Mr A was given just over two months to decide what to do and it was in the middle of a financial crisis. He considered the impact on Mr A of these changes. He found Coutts proposed alternative investment aimed to mitigate the impact of the changes - this was fair in the circumstances.
- It isn't possible to know whether there is a tax liability for Mr A as a direct consequence of the change of investments, as future investment performance is unknown and it is possible gains in the new portfolio may be sheltered from UK taxes for a UK non-dom claiming on a remittance basis. So Coutts does not have to provide an indemnity to cover any additional tax.
- Coutts is not required to meet Mr A's request to receive the difference between the capital he invested in the CMAFs and the redemption price he received upon the forced redemption. Although Mr A suffered losses, refunding them is not proportionate and this would be putting him in a better financial position than he otherwise would have been. Coutts also doesn't need to refund any fees it charged for the CMAFs. The offer made by Coutts was fair in that it agreed to waive any subsequent advice fees for the new portfolio.

Mr A didn't accept the investigator's findings and provided further submissions. In summary he said:

- It's incorrect to say he only received advice in 2020, he also received advice when the top ups were made in 2021 and 2022. At the time of the top ups, he had a call with Coutts to discuss whether there was any change in his circumstances and Coutts then either re-confirmed the 2020 advice or issued a top-up advice. Coutts was already seriously considering the Reorganisation at the time of the February 2022 advice; it had already applied for regulatory approval. There is little doubt that at least some of the investments in 2021 and certainly the investment in 2022 were a

clear-cut case of selling unsuitable products.

- Coutts continued to sell products that would soon become unsuitable for investment due to its own actions (i.e., the Reorganisation). This clearly exemplifies what would be an unfair and unreasonable approach.
- Coutts's offer is not fair. The Jersey Discretionary Portfolio is based on a similar investment strategy but is not the same investment. It would be incorrect to think that moving from the CMAFs to the Jersey Discretionary Portfolio was like selling one security and buying the same security again.
- There were delays between the redemption of the existing investments and the reinvestment of the proceeds. The gap between redemption and reinvestment means that he was fully exposed to the market volatility during that time. Any upward movement of the market during that period would translate into an immediate loss. A fair and reasonable approach would have been for Coutts to ensure that the redemption and the reinvestment occurred at the same time.
- He is a UK non-dom until 6 April 2024, when he becomes deemed domiciled in the UK. As a result, starting from 6 April 2024, he will be taxed on his worldwide income and it would not be possible to shelter his income from UK taxes – and this has important implications.
- He has requested a tax indemnity to the extent higher capital gain taxes would apply due to the reorganisation. If there is no growth of the investment and no capital gains tax, then no indemnity would apply. The tax indemnity he has requested is relevant if the investment in the CMAFs and the Jersey Discretionary Portfolio were to deliver the same return, his capital gain liability under the Jersey Discretionary Portfolio would be much higher.
- He does not have the potential to benefit from higher capital growth than he otherwise would have if he had remained in the CMAFs. Although the reinvestment occurred at a lower price, the amount reinvested was also lower than the original invested capital, so overall he would not benefit from higher capital growth as he has already incurred a loss of approximately \$174,000 and £10,616 on the redemption of the USD and GBP CMAF units.
- He understands that the aim is to put him in the same economic position as if no changes had been made. He thinks a reasonable approach, is to view his position when he surrenders the Jersey Discretionary Portfolio and look at what the value of the CMAFs would have been at that time if he had continue to hold his investment in the CMAFs. To the extent there is a shortfall, Coutts would indemnify him for this.

Coutts provided further information following Mr A's response. In summary it said:

- The original investment advice allowed for regular top ups. In 2021, the regular top ups were paused at Mr A's request and reinstated on 2 February 2022 following confirmation from him that nothing in his circumstances had changed. These were not individual rounds of advice; the top ups were based on the original 2020 advice.
- The project to move the CMAF funds to the UK was confidential to the majority of its business until a non-disclosure agreement (NDA) was lifted around March 2022. Until the Irish and UK regulators had been consulted and agreement was obtained alongside relevant shareholder approval, nothing was certain. It was able to

communicate with clients about the project once regulatory consultation had taken place. In the meantime, whilst the outcome was uncertain, the CMAFs continued to be the appropriate solution for Mr A based on the original advice given.

- It agrees that the CMAFs and the Jersey Discretionary Portfolio are not exactly the same, however it is the closest comparable investment it has and would expect them to produce broadly similar outcomes. They do attract different fees, however the fee for the Jersey Discretionary Portfolio has been reduced for clients impacted by the onshoring of the CMAF funds.
- Regarding the timing of the sale of the CMAFs and the re-investment in the Jersey Discretionary Portfolios it wasn't possible to avoid Mr A being exposed to market fluctuation, during the investment into the Jersey portfolio whilst the CMAF redemptions settled. This was the same approach taken with all unitholders in the same situation as Mr A.
- In relation to the tax points made. What, if any, UK capital gains tax may become payable in the future is dependent on a number of uncertain factors, including tax residency status, investment performance, available losses etc. As Mr A is currently claiming the remittance basis of taxation, he still has the opportunity to restructure his investments and mitigate any future tax costs. Also, it is not reasonable to make tax comparisons across the different investment offerings. At the time of investment it would not have been possible to predict gains or losses for tax purposes.

An investigator issued a further assessment. He also reached the conclusion that Coutts had acted fairly in the circumstances in the proposal it made to Mr A and added some further reasoning. In summary he said:

- The suitability letter issued for the original advice in 2020 gave scope for the quarterly top up investments as part of the advice. So, the top-ups made in February 2021 and June 2021 were based on the original advice provided, and only required confirmation from Mr A that his circumstances remained unchanged. The September 2021 payment was suspended at Mr A's request. The quarterly top ups were then reinstated in February 2022 at his request. It's notable that on this occasion, Coutts revisited the advice, and reconfirmed the suitability of the top up investment on 2 February 2022 – so Coutts provided advice on two occasions (August 2020, and again in February 2022).
- Coutts explained that the project to move the CMAF funds to the UK was subject to an NDA. And as such, the project was confidential to the majority of the business, until the NDA was lifted. This happened after Mr A made the last of his investments, so the evidence doesn't support there was awareness (by the adviser) of the proposal at any time Mr A received advice.
- In respect of tax considerations, the growth of the investment isn't something that can be foreseen, it could even make a loss. So the incurrence of a tax liability as a direct consequence of the change of investments is an uncertain event that may or may not materialise. That being said, there is potential for higher CGT to arise as a result of the switch to the Jersey Discretionary Portfolios. But it isn't appropriate to request Coutts to indemnify Mr A against a future event that may or may not occur.
- The offer made by Coutts is fair. There were no unreasonable delays in the switch from the CMAF funds to the Jersey Discretionary Portfolios. Coutts switched the funds within their expected service level agreements and there isn't evidence to

suggest there were any delays in the switching of the funds.

- While the Jersey Discretionary Portfolios and the CMAF funds are not one and the same, their investment strategies and styles are not dissimilar. There isn't evidence to suggest the Jersey Discretionary Portfolios were not suitable for Mr A. He could have chosen not to switch to the Jersey Discretionary Portfolios and instead switched to another offshore multi-asset fund provider if he wished to do so.

Mr A didn't accept the conclusions and asked for his complaint to be referred to an ombudsman, so it has been passed to me to reach 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 clear Mr A has very strong feelings about how Coutts has handled the Reorganisation and he has raised several complaint points. I've read and considered all of the concerns he has raised. However, I trust he won't take the fact my findings focus on what I consider to be the central issues, and that they're expressed in less detail, as a discourtesy. The purpose of my decision is not to address every point raised in detail, but to set out my conclusions and reasons for reaching them.

The decision Coutts took to implement the Reorganisation of the mutual funds Mr A was investing in had a material impact on him due to his residency status. It doesn't appear Mr A could have expected this change, and due to its implications for him it is understandable that he's raised concerns.

But Coutts have recognised that Mr A is impacted by the Reorganisation, and it has proposed actions to mitigate the impact on him for this. As part of the proposal Coutts has provided replacement advice and Mr A's investments were surrendered and transferred to new funds. It is reasonable for Coutts to take this action in order to ensure Mr A is being treated fairly. While it's not possible to completely replicate Mr A's original position before the Reorganisation, I'm satisfied Coutts has attempted to find a solution that puts him in as close as possible to this. In addition to the replacement advice, Coutts has also agreed to do the following:

- Refund the cost of tax advice Mr A needed to seek because of the Reorganisation. I understand it has already refunded £891 to cover the initial invoice issued by Mr A's tax adviser and also confirmed it will refund a further £594 as per the second invoice.
- Waive the standard advice fee of £5,000 + VAT for the implementation and recommendation of the new portfolios.
- Reduced the fees for the new portfolios in line with those charges on the CMAFs.

I've considered whether the above offer is fair and reasonable in the circumstances. The proposal seeks to compensate Mr A for additional costs he has incurred as a result of the Reorganisation. It is reasonable for Coutts to cover the costs of professional services Mr A requires to help him make decisions on his future investment strategy. So, my finding is that Coutts's offer is fair and it ensures Mr A hasn't faced an additional financial burden due to the Reorganisation.

Mr A has raised further arguments as to why he doesn't feel overall he has been treated fairly due to the Reorganisation. I will take each of these in turn.

Advice

Firstly, I've considered the points Mr A's made in relation to the advice he received to invest in the CMAFs. His concerns centre on whether Coutts was aware of the future changes, and how this was taken into account when he was advised to place funds in the CMAFs.

Mr A says he received advice on more than one occasion and as part of this advice he was given no indication of changes to the status of the funds. He argues it was Coutts's responsibility to notify its relevant wealth managers to stop selling products that had the prospect of being unsuitable for investment by certain clients.

Regarding the various points advice was given. I'm satisfied the original advice in 2020 did allow for quarterly top ups to be made. This is confirmed in the suitability report that says Mr A wanted to adopt a phased approach to investing due to him receiving quarterly distributions from his employer. It is recorded that the advice letter covers the quarterly additions throughout 2020 and 2021. I'm satisfied the original investment and the top ups were covered as one piece of advice – and not new advice at each top-up.

I understand that Mr A decided to pause the quarterly top ups in September 2021, and these were reinstated in February 2022. I have seen a letter from Coutts to Mr A at this time to confirm there was a discussion held. There is a record of them discussing his investment strategy, risk profile and that there had been no changes to his circumstances. So it is arguable that Coutts did reassess the suitability of the advice to continue to invest at this time.

There is no reference to potential changes in the residency status of the funds in either the 2020 advice report or the February 2022 letter. While Mr A argues that, Coutts should have taken this into account before allowing him to invest, I haven't found the adviser would have been aware of the Reorganisation at either of these points in time. Coutts has provided evidence that the adviser wouldn't have been in a position to have knowledge of the changes at the points at which Mr A was given advice. It has shared evidence that an internal non-disclosure of information about the Reorganisation was lifted in late March 2022. So this was after Mr A received advice on his last top-up into the CMAFs. This means I haven't found that Mr A was mis-advised about the residency status and the implications of this in relation to his non-dom status at the time he made his investments.

Tax liability

Mr A has raised concerns about the Reorganisation having tax implications for him that he believes Coutts is accountable for. He has suggested that an indemnity should be provided in the event he incurs a higher tax liability. He says the requirement to re-invest the funds could potentially lead to a higher capital gains tax liability because of the losses he incurred on the CMAFS and the lower base cost for the new investments.

I acknowledge the points he makes here and understand his concerns. It is unfortunate that Mr A suffered losses on his original investment – but this was as a result of market performance. It is not possible to predict the future performance of the new portfolio. And obviously any gain or loss will only be realised when the new investments are cashed in. Mr A has also explained that changes to his residency status are imminent and this will impact his tax status.

There is much uncertainty around his future tax liabilities. Changes to Mr A's residency status is a significant factor for the tax he is liable for in the UK. I'm also conscious this position could change again if there are further changes to his circumstances in the future.

When these factors are considered alongside the unknown future investment performance and the date a gain might be realised, it all supports we are dealing with a scenario that is very unclear.

It appears Mr A feels Coutts is liable for a potential liability because it is at fault for the onshoring of the original funds. Whereas my understanding of the proposal made by Coutts is that it's taken reasonable steps to help Mr A mitigate the change in how the funds were invested. As I've explained, it is understandable that Mr A is concerned about the impact of the Reorganisation, but I don't think the requirements on Coutts extend to it being liable for a presently unquantifiable tax bill. So, I don't agree that it is reasonable to require Coutts to provide an indemnity and what it has proposed to is sufficient to show it has treated Mr A fairly in the circumstances.

Notice of Reorganisation

Mr A has also raised concerns about the timings of Coutts' announcement on the change in fund status – including that he was only given a short period of time to accept the reinvestment advice. He says he was effectively forced to invest into the Jersey Discretionary Portfolio to try and minimise the loss. He says Coutts should have notified him of the upcoming Reorganisation as soon as the information was available, so as to allow him to exit at the appropriate time.

Coutts has explained the timeline of the business decision to move the domicile of the fund. It said the key driver for the decision was to solve post-Brexit regulatory challenges. While a project had been set in 2021 to consider the options available, it wasn't until a proposal was approved by the relevant authorities, could it proceed to customer communication and approval stage. This didn't happen until the second quarter of 2022. It also said while the proposal was driven by the business, investor approval was required. It gave investors two months' notice to approve by way of signing a transfer agreement. The approval threshold was 75% of investors per fund. But it recognised there were a small minority of customers for whom the transfer to the UK would not be appropriate, including Mr A. It provided an initial communication to these clients in advance of the two month notice period as it recognised that they would require as much time as possible to consider and seek advice on the proposal.

I've seen that Mr A received notification on 29 July 2022 from Coutts of the proposed change of the assets to be classed as onshore. This was followed up with further communication at the end of August 2022 providing more detail and the expected timeline. Over the next few weeks, it appears there were ongoing discussions between Mr A and Coutts, during which he was able to obtain tax advice and an advice meeting took place. I note a recommendation report for the reinvestment was provided on 14 October 2022. The redemption and reinvestment took place between the end of October and start of November 2022.

I'm satisfied Mr A was given reasonable notice of the proposed changes to the status of the assets. He was given time to consider his options. As mentioned, he was able to get tax advice and financial advice ahead of making any decisions. So there is evidence he was provided with support in the unexpected situation he found himself in. While I accept his desire for more time to consider his options, I'm not persuaded he was forced to accept the advice or that Coutts prevented him from being able to consider his options.

Timings of transfer

Mr A says due to the timings of the surrender and transfer of his portfolio he has lost out due to market movements. He says the delays between the surrender and reinvestment of his

funds due to the Reorganisation have resulted in a loss. In his view, Coutts should ensure that the redemption and reinvestment occurred at the same time.

I've reviewed the available evidence surrounding the redemption and reinvestment. I haven't seen that there were undue delays caused by Coutts. I recognise that there were short periods where Mr A remained out of the market, but this was minimal. Mr A suggests the normal service level agreements shouldn't apply as this isn't a situation where he was simply electing to switch funds. But I don't find Coutts is required to follow a different approach than that described to in its original offer to provide replacement advice and facilitate this if accepted.

Mr A says he has suffered a loss as a result of the reinvestment. But I don't think it is reasonable in this situation to require Coutts to consider market movement – for example I wouldn't have expected Coutts to recoup any positive movement in Mr A's favour. The evidence I've seen indicates the redemption and reinvestment happened within a reasonable timescale and I haven't seen that failings by Coutts caused Mr A a detriment.

In summary, I find Coutts has treated Mr A fairly in the way it has dealt with him following the announcement of the Reorganisation. It has waived fees, reduce charges and paid accountant bills (I understand both accountant bills have been paid - but if the second bill hasn't this needs to be paid). It has provided replacement advice and the funds have been reinvested to protect the required status. In these circumstances, I don't require Coutts to do anything further.

My final decision

My decision is that I don't uphold this complaint. This means Coutts & Company doesn't need to do anything further (subject to confirmation that both accountant bills have been paid).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 18 April 2024.

Daniel Little
Ombudsman