The complaint

The executors of the estates of Mr C and Mrs C, represented by Mr A, are complaining about the advice given to Mr and Mrs C by Stephen Baker Financial Consultants Ltd (SBFC) before they merged with Futura Wealth Management Ltd.

What happened

The late Mr and Mrs C were advised by SBFC from 2010 until their deaths, in 2017 and 2020 respectively. The representatives of their estates complained to SBFC in 2021, raising the following complaint points:

- SBFC's advice to Mr and Mrs C in 2011 to invest in a General Investment Account (GIA) was unsuitable.
- The advice to invest in a bond in 2015 was unsuitable based on Mr and Mrs C's investing experience, appetite for risk, objectives, and age.
- SBFC haven't been able to provide any documentation which explains why they recommended the bond be purchased via a discretionary loan trust (DLT).
- The DLT wasn't established correctly, meaning that it didn't protect the estate from inheritance tax (IHT) as intended.
- SBFC attempted to "cover up" the lack of a DLT which meant the executors had to spend a significant amount on accountant fees to try to understand what had happened.
- There's no evidence that SBFC carried out any regular reviews of Mr and Mrs C's investments. The executors say this would have been particularly important after Mr C's death. They've suggested ongoing fees paid by Mr and Mrs C's investment providers to SBFC should be refunded to the estate as they don't think SBFC provided an ongoing service.

SBFC didn't uphold the complaint, so the executors brought it to our service and one of our investigators looked into it. His view was that the investment advice SBFC provided in 2011 and 2015 wasn't unsuitable. But he concluded that SBFC didn't set up the DLT correctly and therefore ought to be held responsible for the consequences of that error. He also said SBFC ought to have advised Mr and Mrs C to have placed the bond in either a joint loan trust or two separate loan trusts. If they had done, half of the original loan would have been repayable when Mr C died, and the ongoing advice fee would have been halved.

SBFC weren't happy with our investigator's view. They said they were confident their advice had been suitable. They added that they weren't supposed to be advising on mitigating IHT and so would have been within their rights not to have discussed a trust at all. In relation to the failure to establish the trust, they felt the bond provider had let them down by not informing them that the trust hadn't been properly set up. They didn't think a financial loss had arisen from the bond not having been placed in trust.

Mr A also had comments on the investigator's view. He said that SBFC's delay in telling the executors that the DLT hadn't been established had had a significant impact on the level of stress and distress felt by the executors after Mrs C's death. He added that he didn't think the advice to invest in the bond was suitable – because the DLT didn't exist. He felt that the two couldn't be separated and therefore all fees in relation to the bond and trust should be refunded, not just the fees charged after Mr C's death. Finally, Mr A disagreed with our investigator's assessment of the advice given by SBFC in the years following Mr C's death. As a minimum, he said, SBFC should have advised Mrs C in late 2017 on the importance of taking actions in relation to the DLT they thought they'd established.

When I looked at the complaint, I had a different view on appropriate compensation, so I issued a provisional decision on 3 May 2023. In summary, my provisional decision said:

- Neither party has disagreed with our investigator's view that SBFC's advice in 2011 to invest in the GIA was suitable. I've reviewed the documents from the time and have formed the same view as our investigator, for broadly the same reasons.
- SBFC's suitability letter dated October 2015 sets out their understanding of Mr and Mrs C's objectives at the time. This includes outperforming the returns available on cash, having a high level of capital guarantee, and managing potential IHT liabilities. This is consistent with an SBFC letter dated September 2015 which said that the bond would be placed in a loan trust so that the capital was fully accessible at all times but that any growth would be outside the estate which would mitigate IHT. Despite what SBFC have said in response to the complaint, it seems clear from this letter that IHT was part of the reason for using a trust.
- Mr and Mrs C's top priorities were investment planning, maintaining their standard of living, family security, reducing tax burden, and mitigating IHT. It added that they held too much in cash and single equities – which meant there was a risk of erosion – and that they could be more tax efficient. It also seems that Mr and Mrs C wanted to keep control of their capital, and that they had a cautious attitude to risk.
- Taking all of this into account, I don't think the bond SBFC recommended was unsuitable. It was a low risk investment with a guaranteed minimum value at the end of the term, or on death of the lives assured. So I'm satisfied the bond met most of Mr and Mrs C's objectives and reduced their cash holdings. On its own it didn't meet their IHT mitigation objective. But the advice to place the bond in a DLT did help with this – it meant that any growth in the bond would fall outside of Mr and Mrs C's estate – because the bond would be owned by the trust.
- There's a lack of documentation of SBFC's advice in relation to the trust. But it seems they advised Mr and Mrs C to set this up as a single loan trust – the trust deed shows Mr C as the sole settlor. As our investigator noted, the funds placed in the bond were jointly owned by Mr and Mrs C, and the bond was in their joint names – so the DLT should have been a joint loan trust with joint settlors to mirror that.
- When establishing a DLT, the trust needs to be created first so that the settlor can loan money to the trust and the trustees then invest that money in the bond. But this isn't what happened in Mr and Mrs C's case. The bond application was submitted, and the investment made on 21 October 2015 – then the trust deed was signed on 6 November 2015. SBFC say it's not their fault that the DLT wasn't correctly established – they've blamed the bond provider. I disagree. SBFC should have been aware of how a DLT needs to be set up. It follows that I think they're responsible for any consequences of their failure to establish the DLT.
- In April 2021, SBFC told the executors that the bond provider had suggested the bond might not be held in trust and added "*As soon as they get back to me I will in turn get back to you*". The bond provider emailed SBFC on 28 April 2021, saying: "*The Plan was not placed in a Discretionary Loan Trust. A Loan Trust can only be established before the Plan invests, as the Settlor loans the premium*".
- SBFC say they told Mr C's son on the phone that the trust hadn't been established

on the same day. I've seen no evidence that this was the case. Everything I've seen suggests that the executors remained unaware that the trust hadn't been set up properly until SBFC confirmed this in an email in November 2021.

- In relation to ongoing advice, I'm satisfied SBFC offered regular reviews, which Mr and Mrs C rarely took them up on. And they'd offered advice to Mr and Mrs C's children after Mr C's death. So I didn't agree that SBFC hadn't offered any advice after Mr C's death. However, had the DLT been established correctly, it would have been beneficial for the bond to be surrendered and the loan repaid in the tax year of the settlor's death. SBFC should have known this and I'd expect them to have advised Mr C's executors of this in the months following his death – but they didn't. So it's fair to say SBFC's advice was lacking at times.

In my provisional decision I went on to think about putting things right – and said:

"When thinking about compensation, my aim is to put the estate in the position it would have been in had SBFC not made any errors.

As I've outlined above, SBFC's main error was in not correctly setting up the DLT. This was followed by not specifically advising Mr C's executors to surrender half of the bond, and by not clearly communicating to the executors that the DLT had not in fact been established.

I think it's fair to say if SBFC had got things right, the bond would have been purchased by a joint DLT in Mr and Mrs C's names. And half of that would have been surrendered within the tax year in which Mr C died, with the remaining half being surrendered within the tax year of Mrs C's death.

If this had been the case, I'm inclined to say the following would have happened:

- *Half of the growth the bond had achieved by October 2017 would have been taxed as Mr C's income – with that half of the bond achieving no further growth beyond that date as it would have been surrendered;*
- *Mrs C would likely have retained the funds in cash, given her very cautious attitude to risk – so would have achieved further growth only at the average rate of return on cash[1] for the period from Mr C's death to her own death – the funds plus that growth would have been included in Mrs C's estate and subject to IHT;*
- *The remaining half of the bond would have continued to achieve growth – the bond would have been surrendered in the tax year of Mrs C's death and the growth taxed as her income;*
- *The second half of the initial loan (£25,000) would have been included in Mrs C's estate as a debt due to the estate and would have been subject to IHT; and*
- *There would have been no further tax implications.*

The executors and Mr A have understandably lost faith in SBFC. So I'm inclined to say they should ask a suitably qualified financial advisor to calculate the difference between the net return[2] that would have been achieved given what I've set out above and the net return[2] actually achieved on the bond. SBFC should pay any difference to the estate together with simple interest at 8% per year from the date the estate paid its IHT liability to the date of settlement. SBFC should also cover the costs of the independent financial advisor.

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[1] This should be assumed to be equivalent to the rates published by the Bank of England (BoE) showing the average return from one-year fixed rate bonds.

[2] Net return is the total value of the growth on the bond (and, where applicable, on the cash) less all income tax and IHT paid or payable in relation to the investments.

In relation to fees, SBFC would have been entitled to charge the initial advice fee and the ongoing advice fees if they had correctly set up the trust. So if I'm asking SBFC to put the estate in the position it would be in if they'd correctly set up the trust it's not fair to also say they should refund the fees. But the ongoing advice fee in relation to the bond would have been reduced by half from the date of Mr C's death because the value of the bond would have been halved. It follows that I think SBFC should pay the estate half of each ongoing advice fee they received on the bond from the date of Mr C's death. They should add 8% simple interest per year from the date they received each fee up to the date of settlement.

Mr A says the estate's incurred additional costs due to the confusion over whether or not the loan trust existed. The email from the accountant who did the probate work says he spent 22.75 hours on everything to do with the GIA and the bond and trust. Given that I've concluded the GIA and bond were suitable it's not fair to say SBFC need to pay for all these hours – many would have been incurred anyway. SBFC told the accountant the full cash-in value of the bond should be used for probate on 29 April 2021. And the relevant IHT form was submitted not long after that. I haven't seen anything to suggest that additional costs were incurred by the estate once the absence of the DLT was discovered. So it's difficult to quantify the extent to which additional costs were incurred by the accountant simply because the trust hadn't been set up correctly.

Instead, I'm inclined to say SBFC should pay the estate a lump sum figure of £500 which I think is a reasonable contribution towards the extra costs it incurred as a result of SBFC's errors."

SBFC didn't reply to my provisional decision, but Mr A made a number of comments. I addressed these by email on 29 June 2023 and, as they changed my position, I put Mr A's comments and my response to SBFC the next day.

SBFC weren't happy. In summary, they said in response:

- They felt the complaint was motivated by greed.
- They were unhappy with the amount of focus in my provisional decision on the failure to set up the trust, and that I hadn't looked at the actions of the bond provider.
- They hadn't been asked to provide IHT mitigation advice.
- In hindsight, the fact that the trust wasn't established has left the estate better off.
- They were concerned about Mr A appointing an adviser to make any calculations as they felt the adviser may have a vested interest in maximising the amount of any claim.

Mr A had a couple of small comments on my email – he asked that I clarify my position on the 8% simple interest. And he said that they'd need to get a lot more data from the bond provider to do the calculations I'd suggested and said the adviser could use assumptions instead.

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, my position is very close to that set out in my email of 29 June 2023. I've considered both parties' comments.

Most of SBFC's comments reiterate what they'd said previously, and don't change my mind. In relation to the appointment of an adviser to make calculations, I've thought about this carefully. Mr A's view is that it will be more efficient and therefore cheaper to use their accountant who is already very familiar with the matter and has done much of the work already. I'm not persuaded by SBFC's view that Mr A's accountant will maximise the claim for personal gain – my understanding is that this is a professional accountant who is a member of a professional association and it would not be worth the risk to his membership or reputation. Any other arrangement would require both parties to agree on the choice of an accountant to do these calculations. This would likely be time-consuming and difficult for them to reach an agreement. And I agree with Mr A that the costs, once this new accountant is identified, would be much higher. For these reasons I've decided that the accountant who's been involved so far should do the calculations.

Mr A's comments were about clarifying how the calculations are done – I've addressed these below.

Putting things right

To put things right, SBFC need to put Mr and Mrs C's estate in the position it would have been in if the trust had been effectively established and SBFC had provided proper advice when Mr and Mrs C had died. I'm satisfied the following is fair and reasonable:

- The executors should ask a suitability qualified adviser to calculate the net value to the estate of the bond when it was surrendered (taking into account any taxes paid or due) and what the net value to the estate would have been at the same date (taking into account any taxes paid or due) if the following steps had been taken:
    - A joint DLT had been established and £48,500 invested in the MetLife bond on the same date as the actual investment was made.
    - Ongoing adviser fees were paid at 0.5% each month on the value of the bond until Mr C's death in October 2017.
    - Sufficient of the bond would have been sold on 31 October 2017 to repay Mr C's £24,250 loan to his estate, with the chargeable gain taxed as Mr C's income in that year.
    - The value of the surrendered segments would have been retained as cash by Mrs C and would have grown by the average rate of return on cash[3] from 31 October 2017 to the date of her death – the underlying amount plus the growth would have been included in her estate and may have been subject to IHT.
    - The remaining segments would have continued to have the potential for growth, and adviser fees would have been paid on the remaining value at 0.5% per year each month until Mrs C's death in December 2020.
    - The remainder of the bond would then have been surrendered and Mrs C's portion of the loan (£24,250) paid to her estate and subject to IHT.
    - The growth on the bond would have fallen outside of the estate.

- When making these calculations, the adviser should obtain the valuation history of the bond from the bond provider. Where there are gaps in the data, the adviser should make reasonable assumptions and explain these assumptions in his report.

- The adviser should deduct the actual net value to the estate from what the net value to the estate should have been and SBFC should pay this amount to the estate, together with simple interest at 8% per year from the date the estate paid its IHT liability to the date of settlement. And SBFC should pay the reasonable costs of the

[3] As before, this should be assumed to be equivalent to the rates published by the Bank of England (BoE) showing the average return from one-year fixed rate bonds.

adviser in performing these calculations.

- SBFC should add on £1,000 for the accountant’s extra costs arising from SBFC’s errors. No interest is to be added to this amount as it is an estimate.

My final decision

As I’ve explained above, I’m upholding this complaint. Stephen Baker Financial Consultants Ltd should pay the amount calculated as set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask the estates of Mrs C and Mr C to accept or reject my decision before 28 August 2023.

Clare King
Ombudsman