

The complaint

Mr and Mrs D complain that they were wrongly advised by Rowanbank Financial Consultants Limited when investing to provide for their children's school fees. They say that as a result they incurred additional tax liabilities and professional fees, and considerable distress.

What happened

The long and complex background to this matter will be well known to the parties so I'll keep my summary here as brief as possible.

In January 2018, having recently relocated to the UK, Mr and Mrs D approached Rowanbank for advice on investing to support the private education of their three young children. The schooling was to begin immediately and continue through to around 2030.

A 'fact find' was completed that identified an initial sum of £120,000 to invest, with consideration also given to the possibility of remortgaging at some point. A recommendation was made to start an investment bond with the lump sum and ISAs to receive regular contributions. The products were set up in April 2018, following which there was discussion about making withdrawals for the ongoing school fees and also in relation to a house purchase. These withdrawals started and continued monthly, at around £10,000 per month.

In April 2019 the bond provider issued a Chargeable Event Certificate ('CEC') to Mr and Mrs D showing a gain of just over £70,000, with a tax liability of just over £14,000. They queried this with Rowanbank but were told that the tax figure was notional, nothing was due, and no action was required.

Over the course of the next year further advice was provided by Rowanbank and investment of £130,000 made into the bond. The regular withdrawals continued, and a further CEC was issued in April 2020, in response to which Mr and Mrs D took no action, in line with Rowanbank's previous comments.

In 2021 further investment of £42,000 was made, but then immediately cancelled due to a change of plans. Around the same time Mr and Mrs D, via their accountant, became aware that the withdrawals from the bond had, contrary to what Mr and Mrs D had been told, created a tax liability and, further, impacted tax credits received by Mr D. To meet these liabilities further withdrawals had to be made from the bond, compounding the issue.

Mr and Mrs D complained to Rowanbank about the matter in November 2021. Following a delay in provision of a final response, the complaint was referred to this service in January 2022. There then followed an extended period of correspondence between the parties around the administration of the complaint. Rowanbank eventually issued a final response in September 2022 in which it said it felt the advice to invest had been suitable and not resulted in any loss. But it accepted that the information provided about the withdrawals had been incorrect and that the wrong method of surrender – partial surrender across all segments rather than whole surrender of some segments – had been used, which had created the tax liabilities and issues. Rowanbank offered to pay compensation for this and sought

information regarding Mr and Mrs D's income in order to do so.

The ongoing correspondence then continued, and Mr and Mrs D opted to involve a solicitor to represent them. There were attempts at mediation and an understanding at one point that the matter would be resolved separate to this service's involvement, directly between Rowanbank and the solicitors. However, for various reasons little progress was made and in October 2023 a new investigator from this service issued her view on the matter, explaining that she felt the complaint should be upheld and detailing the way in which she felt Mr and Mrs D should be compensated.

She said, in brief:

- Given their circumstances, Mr and Mrs D shouldn't have been advised to invest at all.
- As withdrawals in excess of the 5% per annum allowed from a bond would be required immediately it should've been clear that tax issues would be encountered.
- The fact find indicated that Mr and Mrs D's income was likely to increase.
- More thought should've been given to the uncertainty around their housing circumstances.
- This was not a case of taking a 'long-term view' as indicated in the fact find, as withdrawals were to be required immediately.
- Mr and Mrs D had little if any capacity for loss.
- As such, the 'balanced' attitude risk they were categorised as was likely inaccurate and impractical in the circumstances.
- There shouldn't have been any consideration of investing mortgaged funds.
- Both the investment vehicle and the choice of fund were unsuitable.

The investigator recommended that Mr and Mrs D be compensated by way of:

- A refund of all fees paid to Rowanbank for the advice.
- A refund of additional tax paid, tax credits and related accountancy fees.
- £3,000 to reflect the distress and inconvenience caused by the issue.
- A refund of the small loss incurred upon the cancellation of the investment in 2021.

Rowanbank didn't accept the investigator's view. It said it considered the advice to have been suitable in the circumstances, which differed to those the investigator had set out in her view, and in light of Mr and Mrs D's objectives. And it wasn't fair or correct that the fees should be refunded as Mr and Mrs D had benefited from the positive return achieved by the investment.

It also didn't consider it should be held responsible for all the delays in the resolution of the matter, which it felt were caused at least in part by other parties, including the solicitors and this service. Rowanbank said the suggested amount for the distress and inconvenience was too high, for that reason, and also because it didn't consider it was responsible for the failure to maintain Mr and Mrs D's children's schooling and related health issues caused. In short, it felt it had acted reasonably in light of their investment objective, that was always going to be very difficult to achieve.

Correspondence between the parties continued, but the investigator ultimately was not persuaded to change her conclusions. So, with the matter still unresolved, the complaint was referred to me to review.

I put my initial thoughts to both parties. I explained that I was minded to uphold the complaint and direct compensation to be paid, on the basis of reasoning that broadly mirrored that already given by the investigator. But I wanted to make some comments and offer some

clarity on my thinking in advance of a final decision being issued. I said -

- While I appreciated that it was Mr and Mrs D's objective to obtain the maximum possible return from their money to pay for the school fees, I too felt the advice to invest in the bond was unsuitable given the significant uncertainty around their financial circumstances at the time of the advice and going forward, including their likely tax position. The investigator had recommended that Rowanbank's fees should be refunded. However, I proposed a different way of dealing with the unsuitability issue. I thought Rowanbank should compare the actual return made from the investments with a benchmark return of fixed rate bonds, in line with this service's usual approach to compensating unsuitable advice.
- While I could understand Mr and Mrs D's frustration with the matter, I felt it was ultimately their choice to use a solicitor to represent them. This service doesn't normally make awards related to the use of a representative and with the matter having already been referred to this service at the time, I wasn't persuaded the use of a solicitor was necessary.
- I confirmed that the total of costs to be paid by Rowanbank relating to the tax issue was £27,301.34. This included the accountancy costs claimed by Mr and Mrs D, which I felt was reasonable due to the complexity of the matter.
- I felt it was clear the poor advice provided by Rowanbank had created a great deal of distress and inconvenience for Mr and Mrs D. And this was significantly exacerbated by the taxation error and further, the ongoing delay in addressing that error. So, I considered the proposed £3,000 to be fair and reasonable in all the circumstances.

Mr and Mrs D broadly accepted my comments but still felt the fees paid to Rowanbank should be repaid.

Rowanbank didn't agree with my comments. It said Mr and Mrs D's tax position was not relevant in respect of the suitability issue as steps could've been taken to address the position going forward. It felt it was inappropriate to make a comparison with fixed rate bonds as this wouldn't have been available to Mr and Mrs D. It maintained that the investment had not made a loss. It felt the accountancy costs were too high and would've been impacted by delays for which it wasn't responsible. And the delays would also have resulted in tax penalties, which similarly weren't its fault.

Rowanbank also considered the proposed award for the distress and inconvenience caused was too high. It felt the advice and taxation issues were one and the same and stressed again that no consideration had been given to the delays caused by other parties.

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.

In doing so, I've taken into account relevant law and regulations; relevant regulators' rules guidance and standards; codes of practice; and, where appropriate, what I consider was good industry practice at the relevant time. But I think it's important to note that while I take all those factors into account, in line with our rules, I'm primarily deciding what I consider to be fair and reasonable in all the circumstances of the case.

I've noted the further comments provided in response to my initial thoughts. But I remain of the view that the complaint should be upheld, and Mr and Mrs D compensated in the way already described.

In terms of the suitability of the advice, as I said, I appreciate there was a very specific

objective here, which Mr and Mrs D were clearly very keen to try to achieve. But, on balance, I think recommending the investment of money that was required to be drawn on immediately, against the backdrop of Mr and Mrs D's uncertain housing and employment circumstances wasn't suitable. There may have come a point when things were more settled that investment would've become a reasonable and pragmatic part of their financial overall strategy. But I don't think Mr and Mrs D were at that point in 2018.

As such, as I explained before, I think Mr and Mrs D should be put in the position they'd been in if they hadn't invested in the bond and ISAs and had instead left their money on deposit. That is what the fixed rate benchmark is intended to represent. I'm not saying they would have put their money into specific fixed rate products. Rather, they wouldn't have invested, so their money wouldn't have been in a risk-based environment.

I note that Rowanbank feels that there is no loss in this respect, that the recommended investments performed well, even net of fees, so Mr and Mrs D ended up in a better position performance-wise than if they'd not invested. If that's the case, the proposed calculation will show no loss and there will be nothing to pay for this element of the redress. But as I've found the advice to be unsuitable, I feel it's right that the comparison should be made to confirm the position.

In respect of the fees and delays issues, my conclusions are very much based, as I said before, in what I consider to be a fair and reasonable outcome to the matter as a whole. Ultimately Mr and Mrs D did nothing wrong but have nevertheless found themselves suffering a great deal of stress over an extended period. I've noted their comments about the health issues that have arisen as a result of this matter and I've no reason to doubt their veracity.

I appreciate what Rowanbank has said about various delays being caused by other parties – Mr D not responding at the outset when it tried to start the process of resolution, the problems caused by the involvement of the solicitors, the issues it feels the handling of the matter by this service caused. But I'm nevertheless very conscious that it took around 10 months for Rowanbank to respond fully to Mr and Mrs D's complaint. And in that response, of September 2022, it said that it was immediately obvious that the wrong method for withdrawal had been used and that Mr and Mrs D had been given incorrect advice in that respect. I understand that some further information was required to reach a definitive position on how much needed to be paid to Mr and Mrs D as a result of the withdrawal advice error. But I think a much more pro-active and efficient approach to correcting the position could've been taken by Rowanbank much sooner, which would've acted to significantly reduce the stress and anxiety caused to Mr and Mrs D and the compounding of the problem and increases in tax liabilities and penalties.

It is for this reason that I have taken the approach of accepting on the basis of the detailed information provided by Mr and Mrs D the amount that needs to be paid to them in respect of the tax position and the related accountancy fees. And is also why I agree with the sum of £3,000 to reflect the ongoing distress and inconvenience. I consider that this is a fair and reasonable manner in which to bring this matter to a resolution.

For clarity, I note there was the refund of the small loss incurred upon the cancellation of the investment in 2021 included in the investigator's view. I've opted to not include this in my redress as I'm not fully persuaded in respect of responsibility on that point and in any event I feel that the overall financial compensation is fair in the circumstances.

Putting things right

- Rowanbank must compare the performance of Mr and Mrs D's investments with that

of fixed-rate bonds, using the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

If the calculation shows that the fixed-rate bond performance would've been greater, the difference in the two amounts should be paid to Mr and Mrs D. If the investment performance was greater there will be nothing to pay in respect of this element of the redress.

- Rowanbank must also pay the sum of £27,301.34 to Mr and Mrs D in respect of all tax-related costs incurred and accountancy fees. I consider this to be a fair and reasonable award in all the circumstances. I've chosen not to award any interest on this amount as, given the background to the complaint, I am keen to issue this final decision with as much clarity as possible, with settlement requiring no further calculations or information on this point.
- Rowanbank must also pay the additional sum of £3,000 for the serious distress and inconvenience caused to Mr and Mrs D. I consider this to be appropriate as the issues in question resulted in sustained distress, impacting the health of the family health and causing disruption to their daily life.

My final decision

For the reasons given, my final decision is that I uphold the complaint and direct Rowanbank Financial Consultants Limited to pay compensation to Mr and Mrs D as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D and Mr D to accept or reject my decision before 25 April 2024.

James Harris
Ombudsman