DRN-4476753

The complaint

Mr and Mrs S complain about Oculus Wealth Management Limited ('Oculus'). They say that the offshore investment bond they were recommended to start contained a 'non-permissible' asset and this resulted in a tax liability. They would like Oculus to pay this tax liability and any other associated costs. They also say this issue has caused them a significant amount of distress and inconvenience.

What happened

Mr and Mrs S have also complained about the business that manages the investment fund which I'll call Firm T. And the platform on which the investments were bought and sold, I'll call this Firm F. These complaints have been considered separately.

In 2017, Mr and Mrs S were advised to invest £500,000 into an offshore investment bond that they already owned. Oculus agreed that it would continue to manage their existing investments in the bond. But Firm T would manage the new investment in its role as a discretionary fund manager ('DFM').

In 2020, Oculus advised Mr and Mrs S to switch this further investment to Firm T's 'conservative strategy'. This was because their attitude to risk had lowered slightly from what it was recorded to be in 2017.

Firm T's conservative portfolio contained a holding in Wisdom Tree Gold ETF. It's been established that this is a 'non-permissible asset' under HMRC rules in respect of the personalisation of offshore bonds. The inclusion of this asset has led to HMRC determining that the offshore bond was 'highly personalised' and this has led to it being taxed on the basis that it is a personal portfolio bond ('PPB'). Because of this Mr and Mrs S have needed to pay a tax charge that they would not have incurred if the bond had not included this investment.

Mr and Mrs S have complained about this to Oculus, and to the other businesses involved, in respect of this tax charge.

Oculus has considered Mr and Mrs S' complaint, but it has not upheld it. It said that:

- Firm T made this fund available for offshore bonds, and so Oculus expected it would be suitable for Mr and Mrs S.
- Firm T should have ensured their investment was compatible with the products they allow it to be held within. It should have ensured the strategy contained only permissible assets.
- When this was discovered in 2020, Firm T made changes and started to provide information about whether these funds were suitable for offshore bonds.
- Oculus does not manage investments as such, which is why it uses a DFM.
- Firm F bought the asset, and it also could have identified that it was not permissible.

In August 2019, Firm F Informed Oculus that Mr and Mrs S' offshore bond contained the non-permissible investment, and it should be removed from the bond. This needed to be

done before the plan anniversary on 25 August 2019 to avoid the tax charge. As far as I can see Firm F didn't inform Oculus about this time frame.

Oculus said that it asked Firm F to take this up with Firm T as they held the authority to sell the asset. It says it was not alerted to the time sensitive nature of the request. It says it had no control over the investments in the DFM, that broke the personalisation rules, so it wasn't responsible.

One of our Investigators has considered this complaint and has upheld it. He said that:

- When Oculus recommended the Firm T portfolio it already contained the non-permissible asset.
- Oculus should have found out about this when it recommended the portfolio to Mr and Mrs S.
- Firm T and Firm F wouldn't have been aware of Mr and Mrs S' needs so they may not have known that the non-permissible asset would cause a problem.
- He thought that Oculus should pay Mr and Mrs S' tax charge and any other associated costs that they had paid to HMRC.
- It should also pay £300 for the distress and inconvenience this issue has caused them.

Oculus didn't agree and provided some further information, in its response. It said that:

- It reviewed the assets within Firm T's conservative strategy. It understood Wisdom Tree Gold ETF was a permitted asset within the offshore bond structure.
- It was made available for purchase in an offshore bond. Firm F should have restricted the purchase of this investment if it was not a permitted asset.
- It said it could only place trades if the strategy and wrapper are compatible, and so Firm F and Firm T have failed in their duty of care.

Our Investigator did not change their opinion about the complaint. As this is the case it has been passed to me to make a 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.

I'll firstly say that we've received complaints about this issue in respect of Oculus, Firm T and Firm F. I've looked at some of the information provided by Firm T and Firm F in respect of this complaint. And some of the background to the various responsibilities they had are relevant to this complaint.

Looking at what Oculus needed to do. Our Investigator detailed the rules and regulations that underpin business's responsibilities when it gives advice and so I won't repeat these here. But briefly, Oculus did have to ensure that the advice it gave to the consumers, which in this case included the fund and investment choice, was suitable for them. It's been established that this was not the case due to the non-permissible asset in the portfolio.

So, as a starting point. I think it's reasonable to say that Oculus was responsible for the unsuitable advice that Mr and Mrs S were given. But Oculus has said that it was errors and omissions by Firm T and Firm F that led to the investment ultimately proceeding. And if these firms had acted differently, then Mr and Mrs S' investment in the model portfolio would not have taken place. I've looked to see if this was the case.

I'll reiterate here that this complaint is against Oculus and so I can't directly consider if Firm T and Firm F are at fault here. And these complaints have already been considered by the Financial Ombudsman Service. But some of the background to the relationships between the parties is relevant to explain why I don't think the involvement of these two other businesses alters the responsibilities Oculus had.

Firm T agreed to provide, and maintain, a number of 'model' portfolios for customers of Oculus to invest in. When Oculus made a recommendation for a consumer to invest in one of the portfolios, Oculus instructed Firm F, who was an investment trading platform, to open investment accounts to replicate these model portfolios, and make the investments on behalf of the consumers.

I've seen a copy of the agreement Firm T has with Oculus. This agreement specifies that the model portfolios are suitable for several (tax efficient) wrappers. This does not include offshore investment bonds due to the nature of them and the restrictions on the assets that can be held within them. So, I don't think Oculus should have assumed that Firm T had ensured the portfolio was suitable for an offshore bond. It hadn't agreed to do this.

Oculus says that it didn't choose the individual investments in the portfolio. But it is clear from what it has said that it looked at the makeup of this portfolio before the investment was started, to see if it was suitable for Mr and Mrs S. And this would have been the right thing to do as the model portfolio was not bespoke to Mr and Mrs S' circumstances. And wasn't necessarily suitable for use in an offshore bond.

And it still remains that Oculus was responsible for ensuring the portfolio, and the investments within them, were suitable for Mr and Mrs S. And Oculus was the only party involved in this transaction that would have been able to determine if the investments were or were not suitable for Mr and Mrs S. As it had information about their circumstances to enable it to do this. So I don't think the fact that it used Firm T's model portfolio, which contained the non-permissible asset, means that Oculus wasn't responsible for ensuring the investment was suitable for Mr and Mrs S.

Oculus says it relied on the fact that some parts of the information provided by Firm F showed that this investment could be placed in an offshore investment bond. It showed examples from Firm F's online screens that show it has a system where it can indicate if an investment or portfolio is suitable for a certain investment or wrap account. It showed a situation where an investment was noted as not being available for an offshore bond and one that was marked as not available for an offshore bond.

These examples don't relate the actual investments used and so I don't know exactly what Firm F would have shown for this model portfolio. Oculus thinks that Firm F allowing the Firm T model portfolio to be illustrated and invested in an offshore bond shows that it would be suitable.

But this doesn't mean that Firm F has taken on the responsibility to ensure the investment advice was suitable for Mr and Mrs S. This still rests with Oculus. And I think it's reasonable to say that Oculus had enough information about the fund to have determined this, as I said above. It shouldn't have been relying on the information that the platform provider, Firm F was giving it. If it did do this.

And Oculus was made aware that there was a potential problem with a non-permissible asset in the portfolio in August 2019. And whilst there was only a short timeframe within which it could have acted on this, I think it should have done more here. It could have acted

to ensure that this asset was removed from the fund by arranging for an instruction to be given to Firm F to remove it.

I note it says that it wasn't fully aware of the timeframes it had to work to. But again, this is information it had access to, and there is no reason why it couldn't have found this out.

Overall. I think that Oculus is responsible for the suitability of the fund for Mr and Mrs S. I don't think it was suitable for them. This has caused a loss due to the tax that has needed to be paid. I think Oculus should put this right.

And it's clear that this has caused Mr and Mrs S some distress and inconvenience, particularly as they have needed to pay a significant tax liability that they were not expecting to have to. So, I think the £300 the Investigator thought should be paid for this was reasonable.

Putting things right

To resolve the complaint Oculus should:

- Pay the tax charge Mr and Mrs S incurred due to the non-permissible asset being held in the offshore bond.
- Pay any other charges or fees Mr and Mrs S have paid to HMRC in relation to the non-permissible asset being held in the bond.
- Pay any costs Mr and Mrs S incurred when they changed these investments to avoid any future tax charges.
- Interest should be added to the tax charge, other charges and costs, from the date they were paid by Mr and Mrs S to the date of settlement. Interest should be added at the rate of 8% simple per year.
- Pay £300 for the distress and inconvenience this caused Mr and Mrs S.

Mr and Mrs S need to provide evidence of the tax, and charges, they have paid to HMRC. And any other costs they have also paid in relation to this.

If Oculus considers that it's required by HMRC to deduct income tax from that interest, it should tell Mr and Mrs S how much it's taken off. It should also give Mr and Mrs S a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons I've explained, I uphold Mr and Mrs S' complaint.

Oculus Wealth Management Limited should put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mrs S to accept or reject my decision before 19 July 2024.

Andy Burlinson
Ombudsman