DRN-4533709

The complaint

The Trustees complain that MWA FINANCIAL ADVICE LTD, trading as Eversley Wealth Management (Eversley) gave them unsuitable advice in 2019, when it advised them to encash an offshore bond (held within a trust) and reinvest the proceeds.

In particular, the Trustees say they incurred a tax charge of over £20,500 when the offshore bond was encashed. They also incurred an initial advice fee of 3% on the advice they received on reinvesting the proceeds.

What happened

I understand that in early 2019, the settlor of the Trust (a discounted gift trust) sadly passed away. The Trustees say that Eversley arranged for an offshore bond held in the trust to be surrendered and then advised them on reinvesting the proceeds from the bond.

Unfortunately, Eversley has not been able to provide anything to show exactly what was discussed concerning the surrender of the offshore bond. But it has said, based on the limited information available, its adviser made the Trustees aware that '*the bond did not need to be encashed'.*

Initially it also said it had not provided any ongoing advice on the offshore bond as it was not receiving any 'ongoing fees' so it felt it was *'…no longer responsible for providing you with any ongoing advice/service in relation to this bond.'* Eversley subsequently accepted that it had been receiving trail commission from the bond provider.

In early 2022, the Trustees contacted Eversley to ask why the offshore bond had been surrendered and why its adviser hadn't discussed the possibility of retaining the offshore bond within the trust wrapper.

After some delay Eversley responded to the complaint. It said its adviser said that the solicitor acting for the estate had *'…instigated the encashment as part of the probate process...[and] neither yourself nor the solicitors sought any financial advice in relation to the encashment. It is understood that this was done, in order to meet the requirements of your mother's will (setting up of your son's trust) i.e. the bond needed to be encashed as there were insufficient other assets to meet the full settlement needs of the Will.'*

It also said its adviser had made the Trustees aware that the bond did not need to be surrendered and that it had been the Trustees decision to surrender the offshore bond. It offered to pay the Trustees £100 for the delay in responding to their complaint.

The Trustees were not satisfied with Eversley's response and referred the complaint to this service.

Our investigator said that in the absence of anything to show that Eversley had advised the Trustees to surrender the offshore bond, she couldn't safely find that it had advised them to do so.

However, she said that she felt Eversley should refund the trail commission it had received in relation to the offshore bond as it had confirmed to this service that it hadn't provided any *'ongoing advice/service in relation to this bond'*. She also said that Eversley should pay the Trustees the £100 it had offered to pay for the delay in responding to their complaint, if it had not already done so.

The Trustees were not satisfied with our investigator's response and asked for the complaint to be determined by an ombudsman.

I issued my provisional decision on this complaint on 22 November 2023. In it I explained that I didn't think that the advice the Trustees had received from Eversley was suitable. I set out my provisional decision as follows:

suitability of advice

I asked both the business and the Trustees for further information in relation to this complaint.

In particular, I asked whether Eversley had advised the Trustees on investing the proceeds from the offshore bond and for information about the surrender of the bond. The Trustees provided this service with a suitability report dated May 2019, that set out Eversley's advice on reinvesting the proceeds from the offshore bond. The report set out advice to invest the proceeds from the offshore bond into an onshore bond.

However, the Trustees and Eversley have confirmed that this advice was subsequently changed and the Trustees were advised to invest £50,000 each (a total of £100,000) in their Transact General Investment Accounts. An updated suitability report in connection with this change to the investment advice has not been provided to this service and it appears no updated report was prepared by Eversley.

The Trustees also provided documentation from the offshore bond provider that showed Eversley had submitted the surrender form on their behalf and that this form confirmed that the Trustees had sought advice on the surrender from a financial adviser.

I noted that the adviser said he had not advised the Trustees to encash the offshore bond after the settlor of the Trust passed away. But, based on the information the Trustees had provided to this service in response to my request for additional information, I said I could not safely find that the Trustees did not receive advice from Eversley on surrendering the offshore bond.

In reaching this view I took into account that the adviser submitted information to the offshore bond provider confirming that the Trustees had received advice on surrendering the bond. I said it was clear from the information provided that Eversley had advised the Trustees on reinvesting the proceeds from the bond and also gave advice on the tax that would be payable when the bond was encashed.

I noted that in the suitability report dated 1 May 2019, sent from Eversley to the Trustees it set out:

[Name of Trustee's] mother has sadly passed away recently. She held an Offshore Bond with Old Mutual International which was held in trust with both of you as trustees. The current value is approximately £ 109,461. You wanted to invest the proceeds of this bond to achieve a return greater than that provided by deposit accounts over the medium to long term (6 to 10+ years).

In the same report the adviser also provided advice on the tax implications of encashing the offshore bond. The adviser said:

Your surrender of the Old Mutual Wealth International bonds will create chargeable gains; however, as the chargeable gain when added to your income will not take you into higher rate tax (total income more than £50,000), you should not have any additional tax to pay on this gain.

I said that I understood the Trustees incurred a tax charge of over £20,500 when they surrendered the offshore bond in 2019.

As a regulated financial services business, I noted that Eversley would be aware that the Financial Conduct Authority's Conduct of Business Sourcebook sets out, under the heading 'Guidance on Assessing Suitability:

Churning and switching

COBS 9.3.2 G 03/01/2018 *RP*

1.(1)

A series of transactions that are each suitable when viewed in isolation may be unsuitable if the recommendation or the decisions to trade are made with a frequency that is not in the best interests of the *client.*

2.(2)

A *firm* should have regard to the *client's* agreed investment strategy in determining the frequency of transactions. This would include, for example, the need to switch a *client* within or between *packaged products*.

I said that if Eversley had not advised the Trustees on surrendering the offshore bond this should have been clearly documented by the adviser at the time. And if, having been advised against surrendering the bond, the Trustees had insisted on doing so, this should also have been clearly documented by the adviser.

In the absence of anything to show that the adviser made the Trustees aware of the disadvantages of surrendering the offshore bond, or anything to show that the Trustees had a *'need to switch'* I said I could not reasonably find that the advice to encash the bond and then reinvest the proceeds was suitable.

In reaching this view I took into account that the adviser recorded that the Trustees had '*no plans to spend any of your capital over the next five years'* and he advised them to reinvest the proceeds from the offshore bond.

As the adviser recommended that the Trustees should reinvest the proceeds from the offshore bond I said I thought it was particularly important that he should have set out why he felt this was a suitable course of action and why he was not advising them to leave the offshore bond in place.

I said it was unclear to me what benefit the Trustees achieved when they surrendered the offshore bond, particularly as the suitability report made clear they had no need to access the money and the money was immediately reinvested. I also noted that it appeared there was no requirement that the offshore bond (held within the discounted gift trust) had to be encashed on the death of the settlor.

As the Trustees noted, if they had retained the offshore bond, they could have surrendered it at a time when their taxable income was lower. They could also have made use of the 5% withdrawals permitted if they needed access to the money. I said I thought that the adviser could reasonably have been expected to discuss these options with the Trustees as part of his advice on whether it was suitable for them to surrender the bond and then immediately reinvest the proceeds.

I also said I thought the adviser should have discussed the gross roll up of the gains and income on the underlying funds in the offshore bond compared to the taxation on the investment they were advised to take out.

I also noted that the Trustees had said that if they had been made aware of the options available, they may have changed the beneficiary of the trust to their son, when he reached age 18, to reduce any tax due (as he would be a non-taxpayer) when the bond was surrendered.

Again, I said I thought this possibility should have been explored by the adviser as part of his consideration of whether advising the Trustees to surrender the offshore bond and reinvest the proceeds was a suitable course of action based on their personal and financial circumstances and investment objectives.

Having carefully considered this complaint I said I could not reasonably find that, if the Trustees had been properly advised, they would have encashed the offshore bond when they did. I said I didn't think the advice they received was suitable and I was of the view that they would have taken steps to reduce the tax payable on the gains from the offshore bond had they been aware of the options available to them.

fees and charges paid

I said I was mindful that the adviser initially claimed that no trail commission had been received for the offshore bond since 2014. The evidence provided to this service showed trail commission had been paid. As Eversley had been receiving trail commission I said I thought there was a reasonable expectation on the part of the Trustees that they would receive ongoing advice on the offshore bond, including advice on the advantages and disadvantages of retaining the bond after the settlor passed away.

Our investigator recommended that Eversley should refund the trail commission it had received in respect of the offshore bond. As the adviser failed to provide suitable ongoing advice to the Trustees, I said I thought that the trail commission received by Eversley from 2014 onwards, should be refunded, plus interest on this amount.

I also said I understood that the Trustees had paid the adviser an initial fee of 3% of the amount they reinvested. As I was not satisfied that the advice to encash the offshore bond and reinvest the proceeds was suitable, I said I thought this initial fee for the advice on reinvesting the money should also be refunded, plus interest on this amount.

(I noted that in addition to the proceeds from the offshore bond, it appeared that the Trustees had also been advised to invest additional savings at around this time. I made no finding on the suitability of the advice to invest any additional savings. For the avoidance of doubt, I said only the initial fee on the amount reinvested from the offshore bond should be refunded in connection with this complaint.)

I noted that Eversley had offered to pay the Trustees £100 for the delay in responding to their complaint. I said that if it had not already paid the Trustees, Eversley should now pay this £100.

I said I was mindful that this matter had caused the Trustees worry and inconvenience. To compensate them for this, I said that in addition to the redress set out below Eversley should also pay the Trustees a further £200 to compensate them for the worry and inconvenience they had experienced.

I noted that the Trustees said they had incurred an accountancy fee of £300 for the calculation of the tax charge due when they surrendered the offshore bond. They said they felt Eversley should reimburse them for this cost. I said I didn't think Eversley needed to refund this cost as I thought it was likely that the Trustees would have sought advice on calculating whether any charge was due when the bond was surrendered, if only to ensure that their understanding of the tax position was correct.

Both the Trustees and Eversley responded to my provisional decision.

Eversley said that the Trustees had *'asked for the trust to be terminated'.* And it said the suitability report in May 2019 did *'… not give the disadvantages of encashing the bond as the client had already confirmed by that point that they were encashing it. Our view is that they would have proceeded with the encashment in any event, having already made this decision. They did not seek our advice on this and therefore, we do not agree that we were under any obligation to provide advice when this was not required.*'

It also said that the Trustees had not proceeded with the recommendations set out in the suitability report from May 2019. In particular, it said they had not proceeded with the advice to invest £100,000 from the offshore bond into an onshore bond. It said the Trustees had instead gone ahead with its subsequent recommendation to invest £50,000 each (a total of £100,000) into their Transact General Investment Accounts with the proceeds from the offshore bond.

The Trustees also responded to my provisional decision. They said, in summary that:

- they felt Eversley should reimburse them for the £300 accountancy fee they had incurred;

- they wanted me to explain why I had referred to simple interest, not compound interest in the redress calculations; and

- they also asked who would carry out the redress calculation and queried whether they would have the opportunity to check the calculation before any redress was paid to them.

The Trustees also confirmed that following *'subsequent verbal advice'* from the adviser they had not reinvested the proceeds from the offshore bond in an onshore bond and had instead invested £50,000 each in their Transact General Investment Accounts.

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 carefully considered all the information available in this case I do not intend to depart from the view I reached in my provisional decision. I'll explain why.

(I have however amended the redress to reflect that both parties have confirmed that a total of £100,000 of the proceeds from the offshore bond was reinvested in the Trustees' Transact General Investment Accounts.)

did Eversley advise the Trustees to encash the offshore bond?

Eversley says that its suitability report in May 2019 did *'… not give the disadvantages of encashing the bond as the client had already confirmed by that point that they were encashing it. Our view is that they would have proceeded with the encashment in any event, having already made this decision. They did not seek our advice on this and therefore, we do not agree that we were under any obligation to provide advice when this was not required.*'

As I set out in my provisional decision, I cannot reasonably find that Eversley did not advise the Trustees on encashing the offshore bond, or the that the Trustees *'did not seek'* Eversley's advice on whether to surrender the offshore bond. The Trustees have provided documentation from the offshore bond provider that shows Eversley submitted the surrender form on their behalf and that this form confirmed that the Trustees had sought advice on the surrender from a financial adviser. If no advice had been given by Eversley it is not clear to me why it would confirm to the bond provider that the Trustees had sought advice.

Likewise, as I also set out in my provisional decision, the FCA guidance on churning and switching sets out that:

2.(2) A firm should have regard to the client's agreed investment strategy in determining the frequency of transactions. This would include, for example, the need to switch a client within or between packaged products.

As Eversley is aware, it is required to explain both the advantages and disadvantages of any recommendations it makes. There is nothing to show that the Trustees understood the possible disadvantages of the recommendation to encash the offshore bond and then reinvest the proceeds.

Having carefully reconsidered this matter, I remain of the view that, based on the information available, the advice to surrender the offshore bond and reinvest the proceeds was not suitable given the Trustees' personal and financial circumstances and investment objectives.

accountancy fee incurred by the Trustees

The Trustees say Eversley should reimburse them for the £300 accountancy fee they incurred in connection with the calculation of the tax payable on the surrendered offshore bond.

I appreciate the points the Trustees have made. But as I set out in my provisional decision, I remain of the view that it is likely that the Trustees would have sought advice on calculating whether any charge was due when the bond was surrendered if they had chosen to surrender it at a later date when their tax position may have resulted in a lower tax charge, if only to ensure that their understanding of the tax position was correct. I therefore do not think Eversley should reimburse the Trustees for this fee.

interest payable on redress and the redress calculation

The Trustees asked me to explain why I had referred to simple interest, not compound interest in the redress calculation. This service uses 8% simple interest per year, in redress awards as it is easier for businesses and consumers to calculate simple interest, particularly when the amount the redress is payable on changes over the period for which redress is due.

I am satisfied that 8% simple interest per year is fair to both parties in this complaint and I see no reason to depart from this in the redress I have set out below.

The Trustees have also asked whether this service will check the redress calculation on their behalf, or whether they will have the opportunity to check the calculation before any redress is paid to them.

Unfortunately, this service does not have the resources to provide a calculations service. However, as I have set out below, Eversley must provide the Trustees with a copy of its redress calculations in a clear, easy to understand format so that they can review the calculations it has carried out. If the Trustees wish to instruct a professional to review the calculations they are, of course, free to do so, but Eversley is not required to meet or contribute to any such cost the Trustees may incur.

As the Trustees are aware, I am required to be fair to both parties. As this is the case, I cannot reasonably say that Eversley should be required to delay payment of any redress due to the Trustees while they review its redress calculations as this could result in Eversley having to pay a larger amount in additional interest on any amount due.

I note that the Trustees have expressed concern that Eversley will carry out the redress calculations, but I have no reason to think that it will not carry out the calculations accurately and in-line with the redress I have set out below.

Putting things right

fair compensation

In assessing what would be fair compensation, I consider that my aim should be to put the Trustees as close to the position they would probably now be in if they had not been given unsuitable advice.

I don't think the Trustees would have surrendered the offshore bond in 2019 if they had been correctly advised. The adviser recorded that they did not need access to the money from the offshore bond and advised them to reinvest the proceeds. The Trustees therefore incurred a tax charge on surrender of the offshore bond when they had no pressing need to surrender the bond.

It is not possible to say precisely what the Trustees would have done, but I am satisfied that what I have set out below is fair and reasonable.

In particular, I think that, with suitable advice, the Trustees could have taken steps to significantly reduce (or avoid entirely) the tax charge they incurred on the surrender of the offshore bond. As I set out above, there were a number of options the adviser should have discussed with the Trustees before advising them on surrendering the offshore bond and reinvesting the proceeds.

Based on the information available I am satisfied that the Trustees would have taken steps to reduce any tax charge payable on the surrender of the offshore bond by deferring surrender to a time when their income was lower, or possibly by reassigning the bond to their son at a later date. I am also mindful that if the money had been left in the offshore bond it would have continued to benefit from gross roll up.

What must Eversley do?

To compensate the Trustees fairly, Eversley must:

Compare the performance of the reinvested funds with that of the benchmark shown below and pay the difference between the *fair value* and the *actual value* of the investments.

If the *actual value* is greater than the *fair value*, no compensation is payable.

Eversley should compare the performance that would have been achieved if the offshore bond investment had not been surrendered (the fair value) with that of the performance of the net surrender value, after the tax charge of £20,646 had been deducted, the actual value and pay the difference between the fair value and the actual value of the investment.

If the actual value is greater than the fair value, no compensation is payable.

Eversley should also add any interest set out below to the compensation payable.

- Pay to the Trustees £200 for the trouble and upset this matter has caused them.
- Pay the Trustees £100 for the delay in responding to their complaint, if Eversley has not already paid this to the Trustees.
- Repay the initial adviser fee the Trustees paid Eversley for the advice to reinvest the proceeds of the offshore bond together with simple interest at 8% a year, from the date the fee was paid to the date of the settlement. If the above comparison shows that no compensation is payable, the difference between the *actual value* and the *fair value* can be offset against the fee, with interest.
- Refund the trail commission Eversley received in respect of the Old Mutual International offshore bond from 2014 onwards with 8% simple interest per year from the date each commission payment was made to Eversley to the date of settlement.

Income tax may be payable on any interest awarded.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Transact General Investment Account (Eversley Model 7)	liquid	Old Mutual International Collective Redemption Bond	Date the Old Mutual International bond was surrendered	Date of this decision	8% simple per year on any loss from the end date to the date of settlement

The limited records available indicate that the £100,000 the Trustees invested in their Transact GIA's was invested in the 'Model 7' portfolio. In reaching this view I have relied on the email from the Trustees to Eversley dated 30 June 2019. In it the Trustees said:

[name of Trustees] have this afternoon each transferred £50,000.00 to each of our Transact GIA accounts, in order that these monies can be invested in the 'Eversley Model 7' wrapper.

However, if all or part of these funds were subsequently moved to a different fund this should be reflected in the redress calculation.

Actual value

This means the actual amount paid from the investment at the end date.

Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

Why is this remedy suitable?

I have chosen this method of compensation because:

I am not persuaded that, if they had been advised correctly, the Trustees would have surrendered the offshore bond in 2019. They would therefore not have incurred a tax charge on the growth of the offshore bond and would have continued to have benefited from the gross roll up of the growth and dividends in the fund.

The additional interest is for being deprived of the use of any compensation money since the end date.

Eversley should set out its calculations in a clear, easy to understand format and provide a copy of this to the Trustees.

My final decision

I uphold this complaint. My decision is that MWA FINANCIAL ADVICE LTD trading as Eversley Wealth Management should calculate and pay the redress as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Trustees to accept or reject my decision before 19 February 2024.

Suzannah Stuart
Ombudsman