

The complaint

Mrs I is unhappy with the advisory service provided to her by Lowes Financial Management Limited ("Lowes") in respect of her investment portfolio. She is concerned that she will incur tax liabilities as a result of the advice she has received and this wasn't properly considered.

What happened

Mrs I was a long-standing advisory client of Lowes – but became concerned about the level of service she was receiving.

In May 2023, Mrs I decided to end her relationship with Lowes and move to a new advisory firm. At the time she had a telephone call with her previous Lowes advisor, during which she raised a number of concerns. Her concerns included the lack of capital gains tax (CGT) planning included in the advice she'd received. Mrs I was unhappy with the way the call was handled and didn't feel her questions had been answered. Following this she raised a complaint with Lowes. She raised concerns about the conduct of the former advisor during the call, the lack of CGT planning and the advice to make a withdrawal from a bond.

Lowes responded to the complaint, it didn't uphold the complaint points made about the lack of CGT planning or withdrawal from the bond – but it did make an offer of £150 in compensation for the poor service Mrs I had received on the phone. In summary it said:

- It apologised for the conduct of the advisor during the telephone call.
- It has always ensured Mrs I has taken advantage of her ISA allowance and where appropriate made use of her CGT exemption. Within the suitability reports the impact of CGT was highlighted and there was no guarantee this could be avoided in order to meet Mrs I's financial objectives and manage her exposure to investment risk.
- The structured products Mrs I was advised to invest in have performed well, so capital gains have been made. But the amount of any gain couldn't be accurately predicted until they mature. The exposure to these products has benefited Mrs I financially. It wouldn't have been in her best interests to avoid an investment with a high success rate just because it may increase her CGT bill.
- In respect of the withdrawal from the bond, it said there was some contradictory information in the suitability letter but this was amended and it was clarified annual withdrawals would be taken. While she didn't have a specific need for income, this advice still wasn't detrimental.

Mrs I didn't accept the conclusions and responded with further concerns about the lack of CGT planning in the advice she had received.

Lowes provided a further response. In summary it said:

- CGT avoidance was never the main consideration when giving Mrs I advice – this was to increase the growth of her assets and ensuring she had sufficient funds to have a comfortable life. The structured products recommended remained suitable and achieved high growth. File notes were left to show that any gains made would be subject to CGT above the allowance.

- A ‘Bed and ISA’ exercise was carried out each year to ensure funds from Mrs I’s General Investment Account (GIA) were moved to her ISA each year to take up her annual allowance to shelter these funds from tax.
- Mrs I has sufficient information in respect of the commencement of withdrawals from her bond, to understand that she would be receiving income from October 2022.
- The offer of £150 compensation was still available to her, and it apologised again for the tone and lack of professional standards displayed by the former adviser in the phone call.

Mrs I remained unhappy with the response, so referred her complaint to this service for an independent review.

One of our investigators looked into the complaint. He confirmed the issues relating to the withdrawal from the bond would be considered separately as it is held within a trust.

The investigator issued an assessment on the complaint. He thought the offer of compensation made in respect of the distress caused by the phone call was fair and reasonable. But he didn’t think Lowes had done anything wrong in respect of how CGT was considered in the advice provided to Mrs I. In summary he said:

- The numerous suitability letters clearly show that CGT was discussed, and it was documented that liabilities may occur.
- It is evident avoiding CGT was never a priority for Mrs I. Her objective for the investments was for capital growth and the investments were spread between a number of different vehicles, including the GIA and the structured products to achieve this.
- When there is a GIA and ISA in place and ongoing advice is being provided, it would be expected an adviser would attempt to maximise tax efficiency by utilising the annual ISA allowances - Lowes did this every year.

Mrs I didn’t agree with the investigator’s conclusions and asked for an ombudsman to reach a decision. In summary she said:

- Lowes has failed to answer her questions about CGT, which it should be able to if tax planning formed part of the advice it provided.
- It is stated that her objectives were a combination of capital growth and income generation, but she wasn’t asked how much income she required, and the reason for is that she hasn’t taken any income.
- The May 2019 suitability letter says she was advised to transfer funds out of an ISA into a structure product, which attracts CGT. She questioned why she was advised to move funds out of an ISA when there was no CGT to pay in the ISA.
- Having reviewed her investments with her new adviser, she was shocked at the amount of tax Lowes exposed her to. Anyone investing their money likes to see growth but not at the expense of such a liability
- Lowes says she “an appetite for structured products,” but she doesn’t know what structured products are, and she followed the advice given and that is why they are in the portfolio.
- She was surprised to learn that the adviser she had dealt with historically was no longer authorised. He had been due to attend a review meeting in January 2023. Lowes has provided contradictory information about this.

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.

Mrs I has told us her main concerns relate to the lack of CGT planning in the advice she received from Lowes. When her new adviser reviewed her investments, she says she was shocked at the amount of potential tax she was exposed to.

I accept all investors would expect tax consideration to form part of a recommendation an adviser makes on an investment portfolio. But the fact an investment that has been recommended could be liable for CGT, doesn't in itself make it an unsuitable investment. This will depend on the specific objectives needs and circumstances of the investor at the time advice was given.

Over a number of years, Mrs I received advice and took out products on the recommendation of Lowes. I've been provided with evidence of the advice process including fact finds, risk assessments and suitability letters that were issued over the last five or so years of her relationship with Lowes.

From reviewing the evidence, including the information from the sales documentation Lowes has provided and what Mrs I has told us, it is apparent that Mrs I's main objective was capital growth over the medium to long term. I haven't seen anything to suggest that she wanted to avoid investments that may incur CGT liabilities or that this was a priority for her.

I've reviewed the details of Mrs I's portfolio. I can see that she held a range of products, some which could be potentially liable to CGT (including the structured products she held and her funds in the GIA), and others not (her ISA held investments).

The products recommended to her do appear suitable to meet her main objective of growth. And I haven't seen that the funds or products selected were outside of Mrs I's risk appetite. It also appears that these investments did generally perform well for her. Although this did mean that she incurred some CGT liability on some of her investments.

I also note tax considerations were recorded within the recommendation, and I can see the suitability letters make reference to the tax treatment of the various investments that were recommended.

There is also further evidence that Lowes did consider Mrs I's tax position in the advice it gave – and sought to help her invest in a tax-free environment. She was utilising her ISA allowance, by following a 'Bed and ISA' strategy each year. This enabled her to move funds from a taxable environment (in her GIA) to a tax-free environment by utilising her full allowance annually.

So, taking this all into account, I think it would be incorrect to say Lowes didn't consider CGT when providing advice to Mrs I. I appreciate that she is disappointed to find out about the extent of her liability. In hindsight, it is possible to say that if different recommendations were made, Mrs I might have incurred less tax. But equally without certainty of what these alternatives are, or how they might perform, I can't safely say Mrs I has lost out or suffered a loss here. In line with my finding, above, I haven't found that Lowes provided unsuitable advice in this respect.

I note Mrs I has raised concerns about the authorisation of a member of Lowes staff to give advice and a conflict of interest. There appears to be some confusion about the date a former adviser of hers was no longer authorised to give advice, despite him being involved in meetings with Mrs I. I've reviewed the submissions about this from both parties. It is clear that Mrs I's allocated adviser did change a number of times over the last few years of her relationship with Lowes, and the communications around this caused her frustration. And I

also note she had a long-standing relationship with the advisor whose authorisation is being questioned. However, I'm satisfied it is clear on each occasion she received advice, it was clear which advisor was providing that advice. The suitability letters that were sent to her indicate which advisor was making the recommendations. So, I haven't found reasons to say Lowes has done anything wrong in this respect. There clearly has been a breakdown in the relationship with Lowes, and because of this Mrs I decided to take her business elsewhere, which she is entitled to do.

Lastly, Mrs I raised concerns about a telephone call she had with Lowes in May 2023. It is not in dispute that the Lowes employee involved didn't handle the call in a professional manner. This caused Mrs I upset. I note a written apology was made. But I agree that a compensation payment is also needed to recognise the impact of the events on Mrs I. Lowes made an offer of £150, I'm satisfied this is fair and reasonable in the circumstances, and in line with what I would award in the situation. I'm not aware this payment has been made to Mrs I so I think it should pay her this as part of the resolution to her complaint.

My final decision

Lowes Financial Management Limited has agreed to pay £150 compensation for the distress and inconvenience caused by the way it dealt with Mrs I during the call. I direct Lowes Financial Management Limited to pay Mrs I £150 in settlement of the complaint. If it has already paid the compensation, it will not need to do anything further.

I think this is fair in all the circumstances, so my decision is that Lowes Financial Management Limited should pay the compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs I to accept or reject my decision before 26 November 2024.

Daniel Little
Ombudsman