DRN-4586409

Financial Ombudsman Service

The complaint

Mrs I and Mr M complain as trustees of a trust about Lowes Financial Management Limited ("Lowes") handling of the withdrawal from a bond. They say the withdrawal wasn't required as income was not needed and it removed the funds from the trust causing a potential tax liability for Mrs I's estate.

What happened

Mrs I was a long-standing advisory client of Lowes. In July 2021, advice was provided to help mitigate any Inheritance Tax (IHT) liability that Mrs I's estate may incur on her death. Lowes recommended a Loan Trust was established to provide the trustees with £240,000 to be used to invest in a bond. Mrs I was the settlor of the trust, and also a trustee. Her son, Mr M, was a trustee too.

In October 2022, Mrs I received an income payment of approximately £10,000 as part of a 4.25% withdrawal from the bond.

In May 2023, Mrs I gave an instruction for the annual income payments from the bond to stop. Shortly after this she raised a complaint with Lowes about the withdrawal. She asked why a payment was made from the bond when the advice was not to take any withdrawals as she had no need for the money. She was concerned it could affect her tax position.

Lowes responded to the complaint; it didn't uphold it. In summary it said:

- The July 2021 suitability letter contained a contradictory statement about withdrawals from the bond, so an amendment was sent in December 2021. This clarified it had been agreed that withdrawals of 4.25% would be taken on an annual basis.
- Mrs I had 10 months' notice that withdrawals were going to commence, but she didn't raise any concerns. There was no impact on her tax position. While she didn't have a specific need for income, this advice still wasn't detrimental.

Mrs I and Mr M didn't accept the conclusions and responded with further concerns.

Lowes provided a further response. In summary it said Mrs I was given sufficient information in respect of the commencement of withdrawals from the bond, to understand that she would be receiving income from October 2022.

Following this the complaint was referred to this service for an independent review.

One of our investigators looked into the complaint – he thought it should be upheld. In summary he said:

- There was an error made when the application was processed as no withdrawals were required and the suitability letter mirrored this. Mrs I had no need for the payment and she hasn't spent it.
- He didn't think Lowes did enough to fully inform Mrs I there was going to be a withdrawal. It sent an addendum to advise the application had been processed

incorrectly but this wasn't enough. While Mrs I did not respond, this doesn't mean that she agreed.
- Lowes should put the trust in the position it would've been in had the error not been made by arranging for the money to be reinvested in trust, covering any cost, financial loss, and pay compensation for the distress and inconvenience suffered.

Lowes didn't agree, and requested an ombudsman reaches a decision on the complaint. In summary it said:

- While the Suitability Report dated 26th July 2021 confirms that no withdrawals were to be made, the bond application form confirms 4.25% withdrawals each year, commencing from October 2022. Mrs I provided her bank details and signed the application to confirm her declaration to the form's accuracy. She also received an amendment letter and revised illustration in December 2021. It says it is unreasonable that someone receiving an addendum letter and revised illustration is not now in an informed position.
- There was still 10 months from when the amendment letter was sent until withdrawals were due to start, but no concerns were raised. If Mrs I didn't agree a conversation had taken place for her agreement to withdrawals, it assumes she would flag this with the adviser when the amendment letter was received or when she received the payment in October 2022, but she didn't raise concerns until May 2023.
- It agrees there was no specific requirement for the £10,200 withdrawal. But Mrs I has not been financially disadvantaged by the withdrawal and had sufficient time to cancel it.
- It questioned its ability to follow the direction (given as part of the suggested compensation) to reinvest the funds, as it is no longer the adviser for the clients and it's not aware of their current financial situation and objectives. So it does not know if putting the £10,200 back into the same fund is suitable advice.

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'm aware Mrs I has raised other issues with Lowes about the advisory service it provided to her in her personal capacity as part of the overall complaint she raised in May 2023. But this decision will only cover the issues relating to the withdrawal from the bond that was held in trust.

Mrs I received advice from Lowes to set up a Loan Trust to hold an investment for her estate planning.

The July 2021 suitability letter issued by Lowes set out the reasons for the recommendation. This confirms the bond aimed to smooth performance and the fund was in line with Mrs I's risk appetite. It said it provides the opportunity for future regular capital withdrawals that are paid to Mrs I, and some capital growth potential on behalf of her beneficiaries.

It also confirms the main benefit of the loan trust scheme was that any growth on the value of the bond investment, is outside of the estate from day one. And the loan always remains within the estate and, as such, is available to Mrs I as the settlor, either as a lump sum or by being used to provide an 'income' in the form of loan repayments.

There is a section in the suitability letter that covers withdrawals. This says:

"Withdrawals

Under investment bond rules, withdrawals of up to 5% per annum (which includes our ongoing fees of 0.75% per annum) can be taken on a tax deferred basis. Taking into account your objectives, I recommend no withdrawals are made. Once commenced however, withdrawals should remain under 4.25% per annum of the original amount invested. I also recommend that any withdrawals do not commence until the bond has been in force for at least one year to provide the potential for capital growth within the bond. Any withdrawals must be paid directly to you."

The illustration that was issued at this time also didn't include any withdrawals.

This indicates that the recommendation was not to take any withdrawals. This is in line with Mrs I's recollections, and she confirmed she had no need to withdraw income at the time. From what I've seen of her circumstances, it does appear that she didn't have a need for income at the time.

But the amendment letter Lowes sent in December 2021 says:

"In addition, whilst the recommendation letter stated that no withdrawals should be taken initially, we have subsequently agreed that annual withdrawals of 4.25% of the investment amount will be taken on an annual basis. This is therefore also reflected within the new illustration."

And a new illustration was produced in December 2021 with the withdrawals factored in.

Lowes's position is that Mrs I had agreed to the withdrawals, and the December amendment was updating the current position. It has highlighted that the original application form Mrs I signed incudes details of the withdrawals. Although signed by Mrs I, it does appear this form was completed in the advisers handwriting. It says as Mrs I didn't raise any concerns after receiving the December letter, and she had time to amend the position, she was in an informed position and would have had the opportunity to raise any concerns about withdrawals that weren't required.

I've considered the arguments made by Lowes but don't think it has treated Mrs I fairly in the circumstances. I'm not persuaded there is good reason for Mrs I to receive a withdrawal from the bond that wasn't included in the initial recommendation that she doesn't appear to have wanted or required. The original advice is clear that withdrawals weren't being recommended, and I don't think the amendment letter is sufficient to explain the change in position. There is nothing in the December 2021 letter that explains why the position changed, and why taking annual withdrawals from the bond was suitable for Mrs I's needs and objectives.

Mrs I's circumstances don't indicate she had a need to make withdrawals at the time the bond was taken out. While she may have wanted access to the funds at some point, this doesn't mean regular withdrawals were required from the outset. There was flexibility within the arrangement to access the funds when and if she needed them. By receiving a withdrawal, it removed the funds from the potential growth of the investment within the trust – which was a benefit described in the recommendation. This wasn't covered in the December amendment letter, and I haven't seen anything else to show Lowes made Mrs I aware of this consequence.

I also don't think the argument that Mrs I was made fully informed of the withdrawals through the amendment letter is sufficient to correct the issues I've identified with the advice process.

She sought professional advice, so I think she was entitled to rely on this to ensure the recommendation would be followed as described. The fact she didn't respond doesn't mean that she accepted and understood why the bond would now be providing income payments.

In conclusion, I am not persuaded Lowes has acted in a fair and reasonable way in the handling of the bond withdrawals. I'm therefore satisfied it is fair to ask it to compensate Mrs I and Mr M (as trustee of the trust) for its errors.

Putting things right

In assessing what would be fair compensation, I consider that my aim should be to put Mrs I and the trust as close to the position they would probably now be in if the withdrawal had not been made from the bond.

I take the view that the funds would have remained within the trust and remained in the bond in the same fund. I understand Mrs I still has the withdrawn funds within her savings, but it is not possible to simply pay the funds back into the bond.

I note Lowes has indicated that it is no longer Mrs I's adviser, so it is not aware of the current financial situation and objectives. I don't think this will prevent it from following my direction, as I'm not asking it to reassess her current financial position, but rather I'm asking it to put her and the trust back into the position they would be had the withdrawal not taken place. And if Mrs I intends on making any changes to the arrangement, she would need to seek independent financial advice.

I am satisfied that what I have set out below is fair and reasonable given the circumstances.

What must Lowes do?

To compensate Mrs I and the trust fairly, Lowes must:

- Ask Mrs I to provide the £10,200 withdrawal payment, so that Lowes can arrange for it to be invested into a new bond to be held with the same provider in the same cautious fund as the original bond. It should make arrangements with the product provider to complete this transaction on Mrs I and Mr M's behalf. If the product provider requires authority for Lowes to complete the transaction on their behalf, this should be provided to allow for a new bond to be set up.

- Establish if there has been a loss of growth in the bond as a result of the withdrawal. This can be calculated by comparing the current value of the bond with what it would've been worth had the £10,2000 withdrawal not been made. To do this a hypothetical value for the bond will need to be calculated (using the performance of the bond since the withdrawal) to establish what the bond would be worth now if no withdrawal had been made. The withdrawal amount should be considered in the calculation by adding it to the current value figure. If there is a loss, this amount should be invested into the new bond alongside the £10,200 payment mentioned above.

- Write the new bond into the same trust and cover all costs associated with this.

- Indemnify Mrs I for any potential IHT payable due (as a result of the growth in the withdrawal amount being removed from the trust) should she pass away within seven years.

- Pay Mrs I £150 compensation for the distress and inconvenience caused by the handling of the withdrawal.

My final decision

I uphold the complaint. My decision is that Lowes Financial Management Limited should pay the amount calculated as set out above.

Lowes Financial Management Limited should provide details of its calculation to Mrs I and Mr M in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs I and Mr M to accept or reject my decision before 5 November 2024.

Daniel Little
Ombudsman