DRN-4763615

The complaint

Mr M complains about the advice he received from an appointed representative of Morgans Ltd to invest into a Quilter International Portfolio Bond (formerly Old Mutual) in 2013. He says that as an inexperienced investor, he was entirely reliant on the adviser but he since realises the recommendation was wholly unsuitable for his circumstances because the adviser failed to inform him how taxation would operate with the investment.

What happened

Mr M invested £207,900 into an onshore bond in September 2013, after having received a £375,000 cash lump sum upon retirement. Mr M did this after having met with an independent financial adviser, who was an appointed representative of Morgans at that time of the advice.

In February 2018, Mr M notified the adviser that he had decided to receive ongoing advice from an adviser that was closer to him geographically, as he had since moved away.

In November 2022, Mr M complained to Morgans about the advice he had received. Morgans did not offer any substantive response to the complaint, because it told Mr M in February 2023 that it believed he had pursued the complaint outside of the time limits applying to the Financial Ombudsman Service – principally, that the advice took place more than six years before Mr M had made a complaint.

Mr M furthered the complaint to this service in March 2023. Since Morgans had objected to the complaint proceeding further, an investigator from this service reviewed the complaint in respect of our jurisdiction.

He noted that Mr M had complained to Old Mutual in 2017 about the bond, but this was following an error it had made in sending him funds that exceeded the annual 5% withdrawal for the policy year. He had also complained to Old Mutual the following year but again, this concerned the administration of the investment. Thereafter, the first complaint he had made about the advice he received was in 2022. None of these complaints were made within six years of the advice. And the investigator felt the 2022 complaint was made more than three years after Mr M knew he had cause for complaint.

Mr M then provided further information. He explained how he had, in fact, complained directly to the adviser in November 2017 – and the adviser hadn't replied. Morgans accepted the 2017 complaint as being presented in time and withdrew its objection.

Mr M's 2017 complaint said, in summary:

- having had to complain to old Mutual Wealth, he now reflected that the bond might not be appropriate for him;
- the return after tax and management fees to date had been around £36,500 – which was only 2.8% per annum;
- he hadn't appreciated that the bond deferred tax, rather than avoided it altogether;

- he was under the impression that at the end of the 20 years he would receive back the remaining sum, whether be it part of the original investment or post- investment gain, tax-free;
- he also didn't realise that withdrawals above the 5% deferred allowance incurred tax liabilities;
- he didn't realise management fees were also part of the 5% deferred allowance;
- he has missed out on utilising his ISA allowances;
- he remained unhappy with Old Mutual in how it operated the bond.

The adviser then provided some additional information about the advice and the events of 2017.

Our investigator then issued his view on the complaint. He said that he did not think it ought to succeed. From the information he had seen, he found the adviser had made Mr M aware of how the bond operated, and how taxation worked. He also felt the adviser had, overall, made a suitable recommendation based on Mr M's recorded circumstances and objectives.

Mr M said he believed the view outcome was incorrect, and asked for it to be reconsidered by an ombudsman. He made further written submissions which I have read in full. In summary, he said:

- he maintains that the adviser never told him in 2017 how he could take the complaint forward;
- he remained dissatisfied with the advice and the matter wasn't resolved;
- though he elected to put £207,900 into the bond, he doesn't recall why;
- however, he must only have done this upon advice to do so as he did not have experience to make this type of decision himself;
- he was clear about the 5% limit on withdrawals in each policy year;
- however, no other discussion was had about alternative strategies to minimise future tax obligations – such as encashing entire segments;
- similarly, though the bond was switched to offshore in 2017, this was at the adviser's suggestion;
- he was and would remain a higher rate taxpayer due to his pension income;
- he therefore cannot understand how the investment would ever avoid taxation;
- he had some unavoidable liabilities at the time of the advice, for example paying £600 per month to each of his adult children;
- his view is that the adviser didn't fully understand the investment he had recommended;
- he could have simply left the entire sum on deposit and gradually moved funds into an ISA each year;
- he is lucky that his new adviser has now informed him about the fact the bond is segmented – and he has been able to close down entire segments to avoid a tax liability – but he otherwise wouldn't have known this;
- however, he will still incur (and has incurred) chargeable gains, and he feels this catastrophic investment wouldn't have taken place if he had been given appropriate advice in 2013.

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 thank the parties for their patience whilst this matter has awaited an ombudsman's decision. Though I realise my decision will be disappointing for Mr M, I cannot uphold his complaint. For the reasons I'll summarise below, I agree with the outcome reached by our investigator.

I also note that a number of points have been made by Mr M regarding the complaint being within our jurisdiction. I haven't had to look at these further, as Morgans consents for the complaint to proceed – which is correct, because Mr M originally pursued it within six years of the advice he now complains about. It is for that reason that the concerns raised in 2017 form the basis of this complaint.

Unfortunately, because of the passage of time and the nature of its relationship with the adviser, Morgans does not retain full records of the advice. This is since it has acted in accordance with relevant data protection rules. Consequently, there is no confirmed evidence of the information recorded about Mr M within fact find documentation.

Nonetheless, there is some evidence available in the form of recollections from both Mr M and the adviser along with a record of the recommendations made, in a 'reasons why' letter dated 13 June 2013. At that time, businesses were required to produce fact find documentation showing that any recommendations made were supported by evidence of the customer's needs and priorities, and that a suitable product had been recommended in the context of what was known about the customer's personal circumstances.

Under relevant rules set out by the Financial Conduct Authority, a business must use the information sought about the customer in order to determine that the service or recommended transaction meets the consumer's investment objectives – including but not restricted to their attitude to risk, the purpose of investing, their tolerance for risk, their experience or knowledge to understand the investment.

I realise Mr M's strength of feeling about what he was likely told at the time of the advice, since he now believes the adviser didn't act in his best interests. I do not doubt his recollections. However, where there is conflicting evidence, such as between the documentary evidence and what is being said by the parties now, I will determine what I believe is most likely on the balance of probabilities.

Having looked carefully at Mr M's recorded circumstances at the time of the advice, his reflections on his knowledge and understanding, and his required objectives, I do not believe the advice given by Morgans' adviser to have been unfair or unreasonable in the circumstances.

Mr M had recently retired, and had taken some funds from his pension. Prior to retirement he was earning around £9,000 per month net of tax. Following retirement, his income was £3,288 per month. Once in place, the bond was set up with Old Mutual to provide an annual 5% withdrawal, split into two six-monthly payments. Though I have not seen fact find documentation, Mr M confirmed in November 2017 that he had no mortgage or other documented liability and he set out that "*both my children – who have now finished university – can expect reasonably secure careers and will no doubt become higher rate tax payers themselves*".

I have carefully considered Mr M's comments in relation to tax efficiency, but I am persuaded that the adviser did make reasonable recommendations that took Mr M's concerns into account. Mr M has since suggested he could merely have left his capital in savings accounts– but that would not be an option to 'avoid' tax as he has suggested, in any type of interest bearing account. Prior to the introduction of the Personal Savings Allowance in April 2016 (where higher tax rate payers can earn £500 in interest on savings before being taxed per tax year), taxation was taken on all savings income at a basic rate by the provider of the savings account, and the further 20% was taken through completion of a subsequent tax return. Since 2016, all interest exceeding the PSA is collected by HMRC.

Aside from annual contributions to an ISA (which was at that time, set at £11,520 for the 2013/2014 tax year) Mr M couldn't have avoided paying tax on any return on gains from his capital. I also do not believe that Mr M's primary intention was to make no return on the funds, purely for the purposes of inviting any further tax. I say this noting his reflection in both his 2017 and 2022 letters to the adviser, where he discusses the return on his investment – as he noted, it was 2.8%.

It seems to me, on balance, that Mr M was looking to invest some or most of his funds into an investment for the prospect of achieving capital gains (with a risk level of 'cautious' recorded by the adviser) and with the flexibility of making limited tax free withdrawals for income, noting he said that he had some ongoing expenses in relation to his children and to have ongoing funds for holidays.

The adviser based his advice on Mr M investing £250,000 of the £375,000. He specifically addressed the use of ISAs and maintaining annual contributions. He explained that:

> "*In essence I believe that the recommendation would have been extremely straightforward if you were able to put all your available capital immediately into Individual Savings Accounts (ISA). This wrapper would enable you to withdraw predominately tax-free income and/or growth throughout the rest of your lifetime, and apart from a minor disadvantage in respect of inheritance tax planning, there are not really any other disadvantages to this strategy. It would however take (assuming current allowances are increased in line with inflation) potentially 20 plus years to get the majority of your investment into this environment. This means that we must consider an alternative with an amount likely to be in the order of at least £150-£200,000 to ensure that you are not compromised whilst the switch into ISAs is taking place.*
>
> *Suffice to say, as a Unit Trust is effectively a slightly less tax-efficient ISA, I believe an amount of up to £100,000 in total should be contributed into a combination of ISAs and Unit Trusts at the outset. The Unit Trust monies are able to be contributed assuming current allowances continue at a rate of £11,520 into ISAs on an annual basis until all of these funds are within the wrapper.*
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> *As it is recommended that these investments be put on a platform, the transition from Unit Trust to ISA can be done both seamlessly and also crucially without any cost from the provider or from ourselves. The balance of funds should then be contributed into an investment bond, as this will provide tax-efficient growth and also will allow you to withdraw up to 5% tax-free from the investment as income for 20 years. As previously discussed, this is a cumulative allowance and therefore makes it a more tax-efficient investment with at least half of the available capital than Unit Trusts, especially for higher rate tax payers.*
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> *Conceptually therefore the recommendation is to invest £11,520 into this year's ISA, up to a further £90,000 (depending on your thoughts following our next discussion) into Unit Trusts, with the balance of any monies that you wish to invest being contributed to onshore investment bonds. The reason that I am recommending an onshore bond as opposed to offshore at this time, is because on balance, I believe that the additional costs involved with managing offshore bonds outweigh the short/medium term benefits of having the money invested in a more tax-efficient*

environment, i.e. benefitting from "gross roll-up" rather than being taxed as it grows. "

It follows that I cannot agree that other alternatives were overlooked by the adviser. I have not seen any clear evidence about what Mr M did with the remaining funds he had from the lump sum received in 2012, though these funds exceeded the amount recommended by the adviser to place into the Unit Trust and annual ISA allowances going forwards in any event. The adviser clearly considered that Mr M needed to use his annual ISA allowance each tax year, as a starting point.

I can see that Mr M is now aware how investment funds within an onshore unit linked bond already pay tax on income and growth. The tax is deemed to have been paid at a rate equivalent to the basic rate of income tax and is deducted straight from the investment fund. For each year the investment is held, the owner can take up to 5% of the initial amount invested, for a total of 20 years, without paying any tax on the withdrawal; this is because its treated as a return of the capital invested.

Mr M says he did not appreciate this distinction at the time of the advice, or understand the nature of the segmentation of the bond. However, I note the adviser did explain how the bond operated and though I haven't repeated them verbatim here, the adviser expressly set out the advantages and operation of the bond, including the 5% deferred allowance and top slicing relief. Furthermore, Old Mutual provided detailed information which set out how the investment operated in relation to segmentation and taxation. I also note that Mr M did not proceed with the advice for three months, which I believe was an adequate time for any reflection on the information he'd been given by either the adviser or Old Mutual. It was also clearly set out by the adviser that further discussions would be held after Mr M had reviewed the recommendations.

Overall, I find it plausible that Mr M was prepared to take some risk with his capital and that this was fairly communicated to him. Further, whilst I have noted the comments about the information he was provided, I consider Mr M was made aware that the capital was not secure and could reduce, not least as a result of taking an income through regular withdrawals.

I have also considered whether the funds in which Mr M invested were compatible with his risk profile, and on the whole I consider they were. They had some equity content in their asset mix, but also contained other elements such as fixed interest and property.

In conclusion, I haven't seen any plausible reasons why Mr M's position has been impacted by the way the bond is treated for taxation purposes such that I could fairly conclude that any taxation of the investment rendered the bond an unsuitable product for the adviser to recommend – noting that he had already accounted for utilisation of the ISA allowance through the proposed unit trust. That Mr M went on to invest slightly differing sums overall does not alter my view that the adviser behaved reasonably in the circumstances in providing his advice based on Mr M's documented objectives in June 2013.

My final decision

Though I know my decision will not be what Mr M has hoped for, I do not uphold this complaint or make any award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 21 October 2024.

Jo Storey

Ombudsman