DRN-5003378

The complaint

Mr Y complains that Taylor Hartley Limited:

1. Didn't set up an investment bond in joint names with his daughters as agreed.

2. Charged ongoing advice fees for 2020, 2021 and 2022 without any contact or review taking place.

He wants Taylor Hartley to refund its initial advice fee for the investment bond, and to refund the on-going advice fees.

The complaint is brought on Mr Y's behalf by a third party. For ease, I'll refer to everything as if it's been said by Mr Y.

What happened

Mr Y had a meeting with Taylor Hartley in March 2019. He was assessed as having a low to medium attitude to risk and wanted to invest for the medium to long-term. He told Taylor Hartley he wanted to ensure "*safe passage of [his] legacy to [his] daughters*" when he passed away. Taylor Hartley recommended he encashed his current bond holding and reinvested it in a different growth bond. Mr Y invested £100,000, from which £3,000 was deducted as the set-up adviser charge. The bond was in Mr Y's name, as owner, with his two daughters as joint lives assured.

He complained in 2023 that he hadn't been receiving regular review meetings. And he asked why he was advised to cash in his bond in 2019 and had to pay £3,000 for it to be reinvested. He said the new bond was supposed to be in joint names with his daughters, but it didn't seem to have been set up correctly.

Taylor Hartley said it hadn't been able to provide annual review meetings because of Covid restrictions. It said the on-going service fee also covered services such as research, administration, and liaising with providers to withdraw funds, and that Mr Y could have made contact if he'd wanted any advice, or a review. So it wouldn't refund its on-going advice fees. It said the bond had been set up as Mr Y had requested and was performing well.

Mr Y sought advice from a different advisor, who told him the bond hadn't been set up as described in Taylor Hartley's suitability letter. With the help of the new advisor, two new bonds were created for Mr Y's daughters, leaving £20,000 in the existing bond in Mr Y's name. The new advisor charged a fee of £1,200.

Our investigator recommended that the complaint should be upheld. He concluded that Mr Y had wanted his two daughters to be joint owners of the bond so that the bond would pass to them when he died. Taylor Hartley had set up the bond with Mr Y as the sole owner and his daughters as joint lives assured, which didn't have the same effect. He recommended Taylor Hartley should reimburse Mr Y £1,200 for the cost of putting this right. And he thought it should pay him £200 compensation for the distress and inconvenience of having to seek alternative advice and to put things right.

The investigator also concluded that the terms of the ongoing adviser charge agreement hadn't been met and that Taylor Hartley should refund its 0.5% fee from April 2019 to the date the charges stopped. Plus a return on the fee equivalent to the return generated by Mr Y's bond investment or, if this couldn't be calculated, 8% simple interest.

Taylor Hartley stood by its comments about why annual reviews hadn't taken place and that the on-going service fees weren't just for annual reviews but other services which had been provided. But it agreed to refund its fees from 3 April 2020 to 3 April 2023 inclusive. It said the expected growth rates for Mr Y's bond for this period varied between 4.70% and 4.90%, and it would round this up to 5%.

It said it did not agree the bond had been set up incorrectly. In summary, it said:

- The bond couldn't have been set up in joint names without Mr Y gifting money to his daughters, which could've been construed as a deliberate deprivation of assets.

- The remit was to ensure Mr Y's assets were arranged to pass to his daughters on death, and to retain control should he need to pay for the cost of care. The advice given was to protect and retain control, not to gift, which has disadvantages.

- The bond will continue after Mr Y's death in the names of the lives assured and will form part of his estate. Mr Y's daughters are named as beneficiaries in his Will, so they will receive their inheritance as intended.

- Mr Y wasn't "*forced to seek advice elsewhere*". He, and his daughters, chose to seek a second opinion, but a solution working with Taylor Hartley would have been possible. The £1,200 fee charged by the new advisor seems excessive.

- The only stress and inconvenience was caused by the new advice – which wouldn't have been the correct advice based on the circumstances in 2019.

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.

Firstly, I'm aware that I've summarised this complaint in far less detail than the parties and in my own words. There is a considerable amount of information here but I'm not going to respond to every single point made. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

On-going service fees

Taylor Hartley set out details of its on-going service in its "valued service proposition" which Mr Y signed on 1 April 2019. It was agreed that Taylor Hartley would provide "review meetings" which included "*review of objectives, review of risk profile, review of tax changes and updates and valuations*"; and a "*comprehensive financial health check*" which included "*detailed tax planning, estate planning and income/expenditure review and forecasting*." I'm satisfied that these services weren't offered to Mr Y during 2020, 2021 and 2023. Whilst the fee covered other services – such as regular valuations and on-going access to an advisor,

I find the review meetings and financial health checks were a key part of the on-going service and it's not fair that Mr Y was charged a fee when he didn't receive a key part of what he was paying for.

Taylor Hartley has agreed to refund the fees. Our investigator recommended they should be refunded from when the initial meeting took place, but Taylor Hartley said it would refund the fees from 3 April 2020. The meeting which led to the advice being given on 1 April 2019 was the last time Mr Y received a review meeting and financial health check. I agree with the investigator that on-going service fees should be refunded from April 2019 to the date of the last charge.

The fees were deducted from Mr Y's investment bond. So it's fair that Taylor Hartley should add the return generated by the investment bond to the refund of fees. It said it would use "*the expected growth rate*" over the period, but it should calculate the *actual* return Mr Y has lost on the fee deductions. If this calculation isn't possible, it should add interest at 8% simple per annum.

Set up of the investment bond

Taylor Hartley set out what was discussed at the initial meeting in a suitability letter dated 1 April 2019. It hasn't provided any notes or a recording of the meeting so I can't be certain exactly what was discussed and agreed. So I reach my conclusion on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

In the suitability letter, Taylor Hartley said:

"*We agreed to encash bond number [xxx] and reinvest in joint names which will ensure the funds pass directly on production of a death certificate and fulfil your wishes."*

But the bond was taken out in Mr Y's sole name, with his daughters as joint lives assured. The bond terms explain what happens if the owner dies:

"*If the owner dies but they are not the life assured the plan will not end and ownership of the plan will pass to the owner's estate…"*

I find Taylor Hartley agreed the bond would be invested in joint names, but it was invested in Mr Y's sole name. And I find that, in the event of Mr Y's death, the funds wouldn't have "*passed directly on production of a death certificate*", as Taylor Hartley had told him; instead, the bond would have formed part of Mr Y's estate. Taylor Hartley says Mr Y's daughters are his executors and his beneficiaries, so they would inherit the bond. But this isn't the same as it passing to them as joint owners, which is what Taylor Hartley said would happen.

Mr Y and his daughters sought advice from a new advisor. I don't think this was unreasonable, taking into account that when they raised the matter with Taylor Hartley it said the bond had been set up correctly. I think it was reasonable for Mr Y to conclude Taylor Hartley wouldn't agree to a solution he would be happy with, so it wasn't unreasonable for him to seek advice from elsewhere.

Following discussions with the new advisor, rather than arranging for the bond to be transferred into the joint names of Mr Y and his daughters, Mr Y assigned part of the bond into each of their names. So he has gifted part of the bond to his daughters. I've considered this carefully. As a result of the advice Mr Y has paid for, he is in a different position to what he would have been in if Taylor Hartley had set up the bond as agreed in 2019. But Taylor Hartley made a mistake, and its fair that it reimburses Mr Y for the cost of putting that right.

Whilst recognising Mr Y is now in a different position to what he would have been in, he appears to be satisfied with that position and, overall, I think a fair resolution here is for Taylor Hartley to pay Mr Y £1,200 to cover the advisor charges he incurred.

I agree with our investigator that Mr Y would always have had to have paid an initial fee to set up the bond, so I don't find there's any obligation on Taylor Hartley to refund its initial set up fee.

Distress and inconvenience

I agree with our investigator that finding out the bond hadn't been set up as agreed, and having to take advice, caused Mr Y distress and inconvenience for which he should be compensated. It was important for him to know that the bond was in joint names with his daughters, and finding out that it wasn't, and therefore would form part of the assets of his estate, rather than passing to them as joint survivors, was upsetting. I think £200 is fair and reasonable compensation in the circumstances.

My final decision

For the reasons I've explained, my final decision is that Taylor Hartley Limited should:

1. Refund its on-going service fees from April 2019 to the date the last fee was paid. Plus the actual return Mr Y would have received from the bond on these fee deductions. If this can't be calculated, Taylor Hartley Limited should add interest at 8% simple from the date the fee was charged to the date of settlement. *

2. Pay Mr Y £1,200 to reimburse him for the cost of receiving advice and setting up the bond as he wanted.

3. Pay Mr Y £200 for the distress and inconvenience caused.

* HM Revenue & Customs requires Taylor Hartley Limited to take off tax from this interest. Taylor Hartley Limited must give Mr Y a certificate showing how much tax it's taken off if he asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Y to accept or reject my decision before 30 April 2025.

Elizabeth Dawes
Ombudsman