DRN-5110105

The complaint

Mr K has complained about the advice he received from 2Plan Wealth Management Limited ('2Plan') to invest into an offshore bond. He wasn't able to make the 5% tax deferred withdrawals he says he had been assured of because this facility wasn't available to a company. He would like the adviser and products fees repaid to him.

What happened

Following advice from 2Plan in 2017 Mr K, on behalf of his company, invested £500,000 into an international offshore bond. He added a further £100,000 later in 2018.

In 2023 Mr K found that he couldn't make withdrawals from the policy which he says he intended to do, so raised a complaint with 2Plan. He also complained 2Plan hadn't provided documents he had requested.

In its response 2Plan said;

- The funds invested were as part of a tax planning exercise to minimise corporate tax, which wouldn't have been possible for onshore and other types of investment.
- The investment was for capital growth for a period of ten years and there wasn't a need to access the funds.
- The suitability report included template wording that applied to an individual rather than a company, but the 'Objectives' section related to the specific objectives and formed the basis of the advice.
- It was recorded that Mr J's accountant considered an offshore bond to be appropriate because of the specialist tax considerations.
- If Mr K had invested in his own name, he would have been liable for personal income tax at his highest margin rate.
- 2Plan wasn't a tax specialist and would look to accountants for advice which Mr K did at the time.

Mr K was dissatisfied with 2Plan's response and brought his complaint to the Financial Ombudsman Service. Our investigator who considered the complaint didn't think 2Plan needed to do anything more. He said;

- He outlined Mr K's circumstances, investment objectives and attitude to risk.
- At the times of the advice Mr K didn't want any withdrawals from the investment bond.
- The investment advice was suitable. Mr K didn't need access to the amount invested and as it was a company investment it was intended for the longer term.
- Mr K didn't start wanting to make any withdrawals until the end of 2023 which indicated there was no known requirement for withdrawals at the time advice was given.

Mr K didn't agree;

- He questioned how the investment could be suitable as it didn't do what the suitability report said it would.
- Circumstances and objectives can change.
- He wanted to make use of the 5% withdrawal entitlement.
- The report said that facility would be available for 20 years.
- Knowing this facility was potentially available was a major factor in his decision to invest.
- The fact this was included in the report shows that it was discussed as a potential requirement.
- The report only mentioned capital growth whereas he could have chosen to withdraw as outlined in the report.
- He didn't actively invest but passively.
- He struggled to see why the facility was written in the report when it wasn't a consideration for him.

Mr K's comments didn't change the investigator's view of the complaint. As the complaint remains unresolved, it has been passed to me for a decision.

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.

After doing so, I've reached the same conclusion as the investigator and broadly for the same reasons. I'll explain why.

<u>Mr K's circumstances</u>

Mr K initially met with 2Plan about this investment on 5 December 2017. This was followed by two further meetings on 20 and 26 January 2018. 2Plan has provided a copy of the 'Financial Plan Objectives' which recorded Mr and Mrs K's circumstances.

Mr K, along with his wife were both employed as full-time directors of two companies, 'Company I' and 'Company J' – Mrs K has joined this complaint. Mr K was aged 54 years and Mrs K 49 years of age. Their joint annual income was £95,000 with a monthly net disposable income of £3,000. They jointly owned their home valued at £160,000 and Mrs K owned two buy to let properties valued at £150,000.

Mr and Mrs K jointly held premium bonds worth £100,000, had £170,000 cash on deposit and they both held stocks and shares ISAs – Mr K's valued at £167,000 and Mrs K's at £124,000. Overall, their assets were valued at just over £1.4m.

Under the 'investment knowledge and experience' section of the suitability report that was issued subsequent to the meeting it recorded that Mr and Mrs K were 'informed' investors which meant;

> '… that you have an average knowledge of financial products and can make an informed investment decision based on the documentation and information provided

to you, together with knowledge and understanding of the specific factors and risks highlighted within them.'

Looking at the assets held by Mr and Mrs K I don't find this to be an unreasonable conclusion. It's clear they did have some investment experience as evidenced by their ISA holdings and bearing in mind the annual limits on ISA additions, the value of the ISAs suggests to me Mr and Mrs K had been invested for quite some time.

<u>Mr K's investment objectives</u>

The Financial Plan Objectives recorded that Mr and Mrs K wanted to invest £500,000 on behalf of one of their companies for growth and the purpose was for 'Capital growth to beat inflation' over ten years. The capital was coming from company profits which were held in cash. Mr and Mrs K wanted 'Less tax admin on an annual basis.'

The report confirmed that Mr and Mrs K's investment objectives were;

> '**Growth no withdrawals**
>
> - You would like to invest a capital lump sum of £500,000 for growth, for a period of 10 years.
> - You are saving to grow the value of your company
> - You are willing to invest this amount for a period of 10 years and will not need access to the amount invested prior to this date.' [original emphasis]

So, at the time Mr and Mrs K were looking for capital growth for their money over a ten year timeframe without taking any withdrawals.

<u>Mr K's attitude to risk</u>

Mr and Mrs K completed an attitude to risk questionnaire where they confirmed they were willing to accept some level or risk. Mr K had historically taken a 'very large' degree of risk and Mrs K 'small'. They were prepared to accept 'A small amount of risk with small potential returns.' Mr K was classed as having a 'cautious' attitude to risk and Mrs K was 'defensive'. For the joint investment into the investment bond Mr and Mrs K agreed their attitude to risk was 'cautious' which was defined as;

> 'You are willing to invest around a third of your capital into stock market based investments, this is in an attempt to achieve returns that are above inflation. Most of your capital will be invested within fixed interest securities, which are less volatile than stocks and shares but you should remember that there are still circumstances where you could get back less than you invested. Ordinarily we would keep your investments in the UK but should you wish to invest some of your capital into overseas equities we can facilitate this, you would of course need to be comfortable with the additional volatility that this can bring. Whilst you are prepared to take some risk in order to achieve more growth over the medium to long term, you would be uncomfortable if you saw losses in any one year in excess of 15%.'

Looking at Mr and Mrs K's responses to the attitude to risk questionnaire and their other investments and investment experience, there's nothing to suggest to me that a cautious attitude to risk wasn't right for them.

<u>The January 2018 advice and was it suitable</u>

As a result of the meetings, the adviser issued his suitability report on 26 January 2018. It recorded that as;

> ''it is a company investment and as such is not needed for immediate use or reinvestment in the company and is intended for the longer term i.e. 10 years plus.'

Mr and Mrs K were to retain £70,000 for emergency funds.

A recommendation was made for the investment of the total £500,000 to be invested into an offshore investment bond. The funds – after the initial adviser charge of £5,000 – were to be split between two funds. One was a passive moderate fund and the other was a multi managed fund. At the time the funds were invested 41% into fixed interest investment, 30% in overseas equity and 16% in UK equity.

I don't find that the investments recommended to be unsuitable for Mr and Mrs K's identified investment objectives and risk profile.

However, crucially for this complaint, the report went onto say;

> **'HOW WILL I/WE BE TAXED?**
>
> You can take 5% of the initial investment each year for 20 years without a liability to tax at that time. This is a tax efficient method of taking a withdrawal and requires no tax return to be completed. Any unused part of this 5% entitlement can be carried forward to increase the entitlement in future years. However, it should be noted that this is described as a tax deferred withdrawal, because on encashment all withdrawals that you've made will be brought back into account to determine whether there is a gain. Any withdrawal above this amount will result in a chargeable gain.'

And it went onto say;

> 'You stated that you did not want to make withdrawals from your investment for the foreseeable future. However, as noted in the 'How will I be taxed?' section of this letter, an investment bond allows you to do this without any liability to tax at that time, and defer the liability and tax administration to a later date. It should be noted that if the withdrawals are greater than the growth on the fund you may erode the capital amount, this means you may get back less than you invested.'

So while information was included in the suitability report about the potential for withdrawals, I'm satisfied it's clear from the time of the advice that Mr and Mrs K didn't envisage taking the 5% annual withdrawal as recognised by the **'Growth no withdrawals'** comment under the investment objectives section of the suitability report. And it was further stated Mr and Mrs K 'will not need access to the amount invested prior to this date' [ten years]. It was only established later, at the end of 2023 when they looked to make withdrawals, was found this wasn't possible as it was invested for a company rather than Mr and Mrs K as individuals.

Mr K has said the option to take 5% annual withdrawals was an important part of his decision making and he wouldn't otherwise have agreed to the investment bond. But Mr K hasn't suggested what else he would have done with the money and I've thought about what other options were available. I note the adviser's recollection was that Mr and Mrs K had recently set up a second company – at the end of 2017 – for the purposes of a tax planning exercise – and investment into the with profits offshore bond would minimise taxation in the short term. I note Mr and Mrs K's accountant was party to the advice and 'appears to have driven the idea of an offshore bond held in the company's name'. And I'm further persuaded by the adviser’s comment that ‘onshore bonds and other types of investment were discounted as they would be liable for tax on an arising basis.’

So, it looks like alternatives were considered but discounted for tax reasons which I think seems plausible as according to the adviser Mr and Mrs K were in the process of completing a tax planning exercise with advice from their accountant. I think it’s most likely that the tax planning was the more important consideration for Mr and Mrs K at the time rather than the potential to take the 5% annual withdrawals in the future. Mr and Mrs K had more than sufficient income at the time and were relatively young so I don’t think it likely that their company income would have stopped. And they also retained £70,000 for emergency funds which was much more than the three months recommended by 2Plan, so they did have a financial cushion to fall back. They also had access to tax free income and capital from their ISAs plus their premium bonds.

However, I do appreciate Mr K’s frustration as the letter clearly stated that 5% withdrawals could be taken in the future. But I am persuaded that the inclusion of that statement was included in error, and it was a template paragraph and didn’t form part of the intended advice. And the fact the letter included **‘Growth no withdrawals’** as part of Mr and Mrs K’s personalised investment objectives suggests to me it was more likely their intention and priority when the advice was given.

When I am presented with evidence and testimony that is incomplete or contradictory, I have to base my decision on the balance of probability and what I think more likely happened. So, while I accept that circumstances and objectives can change over time, I’m satisfied that at time of the advice Mr and Mrs K’s intention wasn’t to take withdrawals and the priority was for growth. So, I don’t find the inclusion of the inaccurate templated information to have rendered the overall advice to be unsuitable. And I don’t believe the inclusion of the paragraph added sufficient weight to Mr K’s reason for investing or that overall, it would mean the bond wasn’t right for them.

2Plan also noted that there were different tax considerations for an offshore bond as recorded in the suitability report;

> ‘No advice has been provided on the suitability or otherwise of an offshore bond. There are quite specialist taxation considerations for a company and your accountant [name] feels an offshore bond is appropriate.’

So, while 2Plan recommended the underlying investments, it didn’t assess the suitability of the offshore vehicle – in itself – for a company as it says it didn’t have the knowledge of the company’s tax position and it looks like the offshore vehicle was proposed by their accountant as the best solution for tax purposes. And for the 2018 advice it’s recorded that ‘your accountant [name] has suggested this is the best approach.’ So, I think it’s more likely that the misinformation given in the suitability report about the facility to withdraw 5% annually has only been a cause of complaint with hindsight. I’m satisfied it’s more likely this wasn’t a consideration for Mr and Mrs K at the time and their overriding investment objectives were the tax planning exercise and wish for ‘**Growth no withdrawals’.**

<u>The September 2018 advice</u>

In 2018 Mr and Mrs K had an additional £100,000 to invest. Again, a Financial Plan Objectives report was completed over two meetings, and their circumstances hadn’t significantly changed. Mr and Mrs K’s annual joint income had increased to £120,000 and their monthly net disposable income was £2,400. Mrs K still owned the buy to let properties, and they jointly owned their home. They jointly held £100,000 of premium bonds, had

£120,000 in cash and still held their ISAs. Overall, their assets were valued at just over £2m. Mr and Mrs K wanted 'capital growth to beat inflation.'

The suitability report of 12 September 2018 confirmed that for this further investment Mr and Mrs K's attitude to risk was again 'cautious'. They said

> '…that this is because it is a company investment and as such is not needed for immediate use or reinvestment in the company and is intended for the longer term i.e. 10 years plus.'

Mr and Mrs K confirmed that their objectives were;

> **'Growth no withdrawals**
>
> - You would like to invest a capital lump sum of £100,000 for growth, for a period of 10 years.
> - You are saving to grow the value of your company.
> - You are saving for capital growth to beat inflation
> - You are willing to invest this amount for a period of 10 years and will not need access to the amount invested prior to this date.'

At this time, they were to retain £50,000 for emergency funds.

It was recommended that Mr and Mrs K invest the full £100,000, less £500 initial adviser fee, into the same offshore investment bond and split between the two same funds. The same incorrect template information was given – ie that Mr and Mrs K could make 5% annual withdrawals if they wished – and it was reiterated that;

> 'No advice has been provided on the suitability or otherwise of an offshore bond. There are quite specialistic taxation considerations for a company and your accountant [name] feels and offshore bond is appropriate.'

So again, it is clear Mr and Mrs K wanted capital growth over ten years plus and didn't need access to the funds. The inclusion again of the incorrect paragraph about the 5% withdrawal facility further persuades me it was a template and included in error. And I remain of the view that at the outset Mr and Mrs K's focus was on the tax planning advantages of the bond rather than a potential requirement of the withdrawal facility. And Mr and Mrs K still held other assets which could provide them with tax free interest and capital if it was needed.

Overall, while there may have been other investment opportunities available to Mr and Mrs K at the time to invest for their company – despite them being recorded as having been discounted – which they now be of the view was better for them, but my role is to look at the advice they were given. And despite the inclusion of the template paragraphs in the suitability letter, I'm satisfied the offshore investment bond wasn't unsuitable for Mr and Mrs K considering their recorded investment objectives.

Taking all the above into account, I haven't been given sufficient information or evidence that despite Mr and Mrs K being given information that they could take withdrawals, that the investment advice overall wasn't suitable. And I'm not persuaded Mr and Mrs K would have invested differently if it had been made clearer in the suitability letter that they couldn't take the annual withdrawal as they invested as a company. So irrespective of 2Plan's error in including the paragraphs about the potential of annual withdrawals, I don't find that it would be fair or reasonable for me to direct 2Plan to do anything more or pay compensation to Mr and Mrs K.

It follows that I don’t uphold Mr and Mrs K’s complaint. I appreciate they will be disappointed in my decision. It’s clear they feel strongly about it and I would like to thank them for the time and effort they have spent in bringing their complaint. But I hope I have been able to explain how and why I’ve reached the decision that I have.

My final decision

For the reasons given, I don’t uphold Mr and Mrs K’s complaint at 2Plan Wealth Management Limited.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr and Mrs K to accept or reject my decision before 29 August 2025.

Catherine Langley
Ombudsman