

The complaint

The estates of Mr T and Mrs T complain that Lloyds Bank PLC provided unsuitable advice to invest in an offshore investment bond and hold it in trust. The complaint has been brought by Mr T2 and Mrs T2 as representatives of the estates.

What happened

The background to the complaint will be well-known to both parties so I won't go over it in detail here.

In 2007 Mr and Mrs T were advised to invest £250,000 into an offshore investment bond (£275,000 was actually invested at a rate of 110%) with a third party, that was then placed into a discretionary discounted gift trust. There's limited documentation available from the time, but it seems accepted that the recommendation was made in respect of inheritance tax (IHT) mitigation.

Mr and Mrs T were the settlors of the trust; Mr T2 and Mrs T2 (Mr and Mrs T's children) the trustees and beneficiaries. The bond was set up on a capital redemption basis and the value of the 'gift' to the trust determined by the bond provider was £155,000. As part of the arrangement £10,000 (4%) would be withdrawn from the bond in quarterly tranches of £2,500 to provide income. That amount couldn't be changed.

Sadly, in 2017 Mr T died, then Mrs T in 2023. Mr T2 and Mrs T2 were appointed as executors for both. Following Mrs T's death, Mr T2 got in touch with the bond provider to obtain information and a surrender quote for the bond. Of the £250,000 originally invested, as noted, £155,000 was considered as the value of the gift, £170,000 had been paid out, and the current value of the bond was just under £244,000. The bond provider confirmed a chargeable gain on full surrender of just under £164,000.

This prompted Mr T2 on behalf of the estates to complain that the 2007 advice had been unsuitable. He said that the income provided from the bond hadn't been required and had simply fallen back into his parents' estates. And any IHT benefits had been negated by the requirement to pay income tax on the gain, at the trust rate of 45%.

Lloyds initially questioned this service's jurisdiction in respect of the complaint, given the time that had passed since the advice was provided. But it was decided that we were able to consider the merits.

Lloyds duly considered the complaint but didn't think it should be upheld. It said, in brief, that without the fact find or recommendation report from 2007 it was unable to fully assess the suitability of the advice. However, it felt documentation supplied by bond provider indicated that Mr and Mrs T had made a fully informed decision to accept the advice to start the bond for IHT mitigation and were made aware of the potential tax implications on final surrender.

The complaint was referred to this service, but our investigator reached broadly the same conclusion as Lloyds. He said, in brief:

- Due to a lack of documentation from the point of sale it was unclear what Mr and Mrs T knew or understood about the income situation.
- Notes from subsequent meetings indicated there was 'no shortfall', but it wasn't apparent what that was referring to.
- But the notes indicated that Mr and Mrs T were aware of the income and had no further concerns regarding IHT.
- Again, due to the lack of documentation, there could be no certainty about what was discussed regarding the taxation position.
- The Key Features documents provided to Mr and Mrs T did explain that related taxation was a complex issue.

The investigator concluded that without documentation setting out the reasons for the recommendation it was difficult to make a finding that the advice had been unsuitable. There was nothing to confirm Mr and Mrs T's understanding around taxation, but there was sufficient evidence to indicate they had wanted to mitigate IHT, achieved this and were aware that they were accumulating funds by way of the income.

Mr T2 didn't accept the investigator's view. He said in brief:

- The 2009 note of the meeting between Lloyds and Mr and Mrs T indicated that they hadn't wanted to take any more action in respect of IHT, but this may have meant they believed they had been given correct suitable advice.
- The investment bond was not a suitable product – it was intended for people whose tax position was likely to change in future.
- Nowhere did it say that the income tax situation had been explained.
- He accepted that IHT mitigation had been achieved, but this was countered by the income tax situation – the liability had simply changed from IHT to income tax.

The investigator wasn't persuaded to change his opinion, so the matter was referred to me to review.

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.

As has been noted, the major hurdle in reaching conclusion on this matter is the lack of documentation available from the time of the sale. There would most likely have been a suitability/recommendation letter issued to Mr and Mrs T that would've summarised their objectives, what had been discussed and the reasons for the recommendation made. But, primarily due to the passage of time, neither party has been able to provide this.

Where the evidence is incomplete or inconclusive, I've reached my decision based on the balance of probabilities. That is, what I think is more likely than not to have happened in light of the available evidence and a consideration of the wider circumstances.

There is some subsequent documentation available relating to review meetings. But none of that provides a particularly clear picture of what was understood. There's the reference to 'no shortfall', which could imply that the income wasn't required. But equally could simply mean there was no income shortfall following receipt of the 4% income from the bond. What is apparent from the 2013 note is that Mr and Mrs T were aware of the bond/trust arrangement and that it was by that point a year from falling outside the estates. And further, they were not concerned about any IHT liability that would remain.

With this lack of clear documentary evidence, I'm only really able to consider what I know of

the wider circumstances and how the recommendation may have suited Mr and Mrs T more generally. In that respect, I'm conscious that the 'strategy' recommended is one commonly used in circumstances where there's a desire to mitigate an IHT liability while retaining access to funds.

I note what's been said about Mr and Mrs T not requiring the withdrawals from the bond as income and that they fell back into the estate, serving only to increase its size. But I've seen no clear evidence of that being the case, and I'm conscious that the amounts of the withdrawals weren't as large as they could've been (4% rather than 5%) which implies the likelihood of some discussion about it and understanding.

Also, with respect to the income tax situation, while, as had been noted, there's no clear evidence as to what was discussed and explained, the product sold fits with the type of approach I might have expected to see in the circumstances. The bond was set up on a capital redemption basis so that it could be continued after Mr and Mrs T had passed away, with the continued investment and release of funds managed by Mr T2 and Mrs T2 as trustees. And while the trust is taxed at 45%, the beneficiaries are taxed at their marginal rates. So, any discussion of the taxation situation was likely to have covered this off.

In all the circumstances, I find I'm unable to conclude that the recommendation was unsuitable for Mr and Mrs T. As Mr T2 has acknowledged it served a IHT mitigation purpose and overall, I think the taxation situation was something that Mr and Mrs T were most likely aware of, or even if not, was not an issue that was likely to have led them to not accept the recommendation.

For completeness, I note Mr T2 questioned the fees paid by Mr and Mrs T to Lloyds but it has confirmed that no advice fee was paid for this investment in the form of initial and/or ongoing charges.

My final decision

For the reasons given, my final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estates of Mr T and Mrs T to accept or reject my decision before 24 April 2025.

James Harris
Ombudsman