DRN-5312199

The complaint

Mr and Mrs L complain that Coutts & Company ("Coutts") stopped moving their money into their ISAs after the 2019/20 tax year. They say they've lost out as a result of losing their opportunity to use their allowances in subsequent years.

What happened

Mr and Mrs L held an investment portfolio with Coutts, managed on a discretionary basis. Most of their holdings were in ISAs in each of their names, with some residual investment and cash holdings in accounts outside the ISA wrappers.

Each year, Coutts would transfer amounts from the general account to Mr and Mrs L's ISAs to use their annual subscription allowances.

In January 2019, Coutts wrote to clients of its discretionary portfolio service. I've not seen the actual letter Mr and Mrs L received, but Coutts has provided a template copy and neither party appears to dispute what the letter said. In this letter Coutts told Mr and Mrs L:

"Before the end of the current tax year (5 April 2019) we would like to move £20,000 from the unwrapped part of your portfolio into a Stocks and Shares ISA with us. This is in-line with how we have funded your ISA historically, and allows you to capitalise on your ISA's maximum annual allowance (subject to sufficient investments being available)."

The letter went on to say Coutts would continue this automatic ISA enrolment, but wouldn't write to Mr and Mrs L each year to let them know they'd done it. It said if they were happy for this process to continue there was:

"nothing for you to do and we will carry on as normal. If however you have funded your ISA elsewhere this tax year, please contact your private banker or wealth manager".

Money was transferred to Mr and Mrs L's ISAs in August 2019, but in subsequent years it wasn't. In 2023, Mr and Mrs L noticed their ISA allowances were no longer being used and complained.

Coutts didn't uphold the complaint. It said the auto subscription would only happen if enough funds were available to use the whole ISA allowance, which hadn't been the case in the 2020/21 tax year for Mr and Mrs L. It said when this happens, the auto enrolment is cancelled and Mr and Mrs L would have needed to apply again. It said Mr and Mrs L's statements would have shown them that they hadn't funded their ISAs in each given year.

Mr and Mrs L weren't happy and came to our service. One of our investigators looked into things and didn't think Coutts had treated Mr and Mrs L unfairly. He said Coutts didn't have any contractual obligations to partially use their ISA allowances, or to inform them of the non-ISA balances being insufficient to make use of the auto enrolment offering.

Mr and Mrs L didn't agree, and asked for an ombudsman to decide the matter. They maintained they'd been told they didn't need to do anything, and that Coutts would

automatically make use of their ISA allowances, which it hadn't done.

I issued a provisional decision in which I said I intended to uphold the complaint. I said:

In its dealings with Mr and Mrs L, Coutts was obliged to comply with various rules set out by the regulator in its handbook. Of particular relevance here, Coutts needed to comply with the high level Principles set out by the FCA, including Principle 7 which said Coutts needed to "pay due regard to the information needs of its clients". Under the conduct of business rule COBS 4.2.1R(1) Coutts also needed to ensure its communications were "fair, clear and not misleading".

In my view much of this complaint turns on the letter of January 2019. This letter was sent by Coutts to explain how the ISA auto-investment would work going forward, and so I think it was reasonable for Mr and Mrs L to rely on its contents.

This letter, in my view, tells Mr and Mrs L that Coutts will automatically fund their ISAs from their wider portfolio. It specifically notes that they have to do "nothing" and I can't see that it explains what would happen if insufficient funds were available to use the full annual allowance.

The letter does say that the feature would "allow you to capitalise on your ISA's maximum annual allowance (subject to sufficient investments being available)." But I'm not persuaded this explains clearly what has now become apparent is the case – which is that the auto investment will only take place if the maximum allowance can be used. In my view on a plain reading of that section of the letter it simply affirms that the maximum allowance can only be used if enough money is available, I don't think it clearly explains that no investment will take place at all if a lower amount is on account.

Similarly, Coutts has said one reason it doesn't make partial subscriptions is because clients may have made subscriptions elsewhere during the tax year and therefore run the risk of exceeding their annual allowance. But the letter does clearly let Mr and Mrs L know they should inform Coutts if they've funded their ISAs elsewhere – so I don't think they'd have reasonably expected Coutts to be considering the possibility they'd have done this (used another ISA provider) if they hadn't told Coutts about it.

Overall I think it was reasonable for Mr and Mrs L to have considered from receipt of that letter that Coutts would automatically use any money outside their ISAs to fund their ISAs each year. To be clear, I'm not saying that this is what Coutts ought to have done. It's entitled to make commercial decisions about how its services work and whether and how this auto investment would take place. But it needed to give Mr and Mrs L clear, fair and not misleading information about it. That's what I think it failed to do.

I've gone on to think about the consequences of Coutts's failings here. And currently, I'm not persuaded this has caused a quantifiable financial loss to Mr and Mrs L. I say this for two main reasons.

Firstly, given the relatively low sums available to be reinvested in their ISAs in the 2020/21 tax year, it currently appears to me more likely than not that having that amount outside their ISAs isn't likely to cause them financial detriment. They ought to be able to now move that money into ISAs using this and future years' allowances, and any income and growth on those sums in the meantime is likely to fall within other allowances such that Mr and Mrs L are, in my current view, unlikely to pay any tax on those investments which they otherwise wouldn't have. If Mr and Mrs L disagree with this analysis I invite them to provide relevant evidence in response to this provisional decision.

Secondly, I do think there was an opportunity for Mr and Mrs L to mitigate their losses (if there indeed were or are any) for subsequent tax years. Mr and Mrs L have said they don't have sufficiently up to date information about the contents of their portfolio to know what funds are where. But from the quarterly reports I've been provided copies of, I think it's reasonable that after the 2020/21 tax year, they ought to have been aware their ISA allowances hadn't been used at all that year. Armed with that knowledge, I think Mr and Mrs L could have instructed Coutts to move any available funds into their ISAs in future years, if that was their preference.

While I don't find evidence of a financial loss, I'm satisfied this experience has been distressing and inconvenient for Mr and Mrs L. They've explained that they trust Coutts with their portfolio and to manage their money appropriately, and that it was concerning to see their allowances not being used as they should have been. Overall I currently consider that Coutts should pay Mr and Mrs L £250 compensation in light of the distress and inconvenience they've been caused.

Mr and Mrs L responded and said, in summary:

- They'd relied on Coutts to inform them if their ISAs weren't going to be used in a given tax year.
- They had significant sums in cash outside their Coutts portfolio which they could have transferred had they known their allowances weren't being used. These amounts will now be subject to tax they wouldn't have been inside the ISAs.
- While they received quarterly reports, they would only look at the headline valuation in order to assess the return they'd made on their investments.
- They thought Coutts had directly caused them to miss three years of ISA allowances.

Having been provided with the evidence referenced in my provisional decision – namely that Mr and Mrs L had enough non-ISA funds to fully use their allowance each year, and that they were generating enough growth or interest to fully use other tax relief allowances – I wrote to the parties again. I said I was now persuaded that there was a financial loss that should be remedied. But I still thought this should be limited to the consequences of missing out on using their 2020/21 ISA allowances, and not for subsequent years, for the same reasons I gave in my provisional decision. I said:

- *Mr and Mrs L were unable to fund their ISAs with £40,000 in April 2021.*
- *They're likely to use their full allowances each year.*
- *That money will be in cash savings, and is likely to be held for a period of 10 years.*
- *The interest on that money will be subject to income tax at the basic rate of 20% (my understanding being Mr and Mrs L are basic rate tax payers and that they will also fully utilise any other allowances which would reduce the tax payable on this interest).*
- *Using the FCA's rates of return for prescribed projections, I assume this money will generate interest at a rate of 1.5% a year (compounded annually).*

I'm therefore minded to direct Coutts to additionally pay Mr and Mrs L a sum which reflects this likely tax burden. That being:

- *Taking £40,000 and calculating what it would be worth growing at 1.5% a year, compounded annually for 10 years*
- *Calculating 20% of the resulting figure, and paying that amount to Mr and Mrs L in compensation.*

Coutts responded and said:

- Mr and Mrs L ought to have been able to tell immediately from the quarterly reports that their allowances weren't being used.
- There wasn't enough in Mr and Mrs L's portfolio, outside their ISAs, to fund £40k into their ISAs in 2020/21. So it isn't fair to compensate them on the basis that's what they'd have done.
- Their ISAs are stocks and shares ISAs not cash ISAs, so it isn't right to use a rate of interest for compensation.
- Their non-ISA funds have received dividends and growth substantially below Mr and Mrs L's allowances, and there are now no funds left in the portfolio. So this money not being moved hasn't incurred any additional tax to Mr and Mrs L.
- Mr and Mrs L ought to have known there weren't enough funds to use their allowances.
- Coutts didn't have any obligation to know about other money Mr and Mrs L might have with other providers, or whether they'd used their ISA allowances elsewhere.

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.

Having done so, I remain of the view I reached in my provisional decision and subsequent email to the parties. I'll explain why.

I agree with Coutts that it didn't have an obligation to monitor Mr and Mrs L's other assets (besides those it managed) or to proactively explore what their ISA usage elsewhere was. But it did have an obligation to communicate with Mr and Mrs L in a way that was fair, clear and not misleading.

For the reasons I gave in my provisional decision, I remain of the view the letter Mr and Mrs L received in 2019 wasn't clear. It gave them the impression that Coutts would use their ISA allowances and that, in effect, if they didn't hear from Coutts that would continue to be the case. I don't think it made it sufficiently clear what would happen if Mr and Mrs L had less than £40,000 available to reinvest in their ISAs, or that Coutts would simply stop using the ISAs without telling them.

So I think it's fair and reasonable for Coutts to compensate Mr and Mrs L if that's caused them a loss.

Putting things right

Again, to be clear, my finding isn't that Coutts ought to have transferred what it could to Mr and Mrs L's ISAs. So I don't find its arguments about the available funds particularly helpful. The unfairness I've identified is one of communication – that Mr and Mrs L weren't reasonably informed about how Coutts's auto reinvestment worked. So to put things right I've had to consider what, on the balance of probabilities, I think would have happened had Coutts been as clear as it ought to have been when it wrote to Mr and Mrs L in 2019.

I think it's fair to give significant weight here to what Mr and Mrs L did, in fact, do once they discovered their allowances weren't being used. And that has been, for the last two years, to transfer funds from outside Coutts into cash ISAs with Coutts. I see no reason to conclude that this isn't what they'd have done earlier, had they been aware how the auto-reinvestment would work.

In other words – if Coutts had been clear in 2019 about what would happen, I think Mr and Mrs L would more likely than not have moved money into ISAs with Coutts each year. Mr

and Mrs L have provided evidence that their holdings outside Coutts are enough that they are unlikely to ever be able to "make up" for those lost allowances – as they'll continue to use their full allowance each year. And while I take Coutts's point about their Coutts ISAs being invested in stocks and shares, their loss here takes the form of any additional tax they'll pay on money outside Coutts's accounts, which would otherwise have been transferred into those ISAs. That money is (and Mr and Mrs L have said will continue to be) held in cash savings or short-term bonds and so the rates of return I gave above remain, in my view, fair to use when calculating any loss.

I've thought again about the degree to which Mr and Mrs L ought to have understood themselves that their allowances weren't being used – in other words whether I think Coutts's lack of clarity *caused* them to miss out on using the allowances.

I remain of the view that I don't think Mr and Mrs L could reasonably have known their 2020/21 allowance wasn't going to be used until it was too late. I do think they ought to have read the reports Coutts sent – the fact they chose not to isn't Coutts's fault. But I also note that the automatic ISA investments tended to happen towards the end of the tax year, in February or March. And Mr and Mrs L wouldn't get a report showing their account activity from February onwards until after the end of April. So I think at the point they got their last report before the end of the 2020/21 tax year, they wouldn't reasonably have known Coutts wasn't going to do anything with their ISAs.

But after that – once they'd received further reports – I still find that Mr and Mrs L had enough information to know that their allowances hadn't been used that year. And so could reasonably have mitigated the impact of missing their allowances in any subsequent years.

Taking all that into account, I remain satisfied that:

- Mr and Mrs L were unable to fund their ISAs with £40,000 in April 2021.
- They're likely to use their full allowances each year.
- That money will be in cash savings, and is likely to be held for a period of 10 years.
- The interest on that money will be subject to income tax at the basic rate of 20% (my understanding being Mr and Mrs L are basic rate tax payers and that they will also fully utilise any other allowances which would reduce the tax payable on this interest).
- Using the FCA's rates of return for prescribed projections, I assume this money will generate interest at a rate of 1.5% a year (compounded annually).

Coutts should therefore pay Mr and Mrs L a sum which reflects this likely tax burden. That being:

- Taking £40,000 and calculating what it would be worth growing at 1.5% a year, compounded annually for 10 years
- Calculating 20% of the resulting figure, and paying that amount to Mr and Mrs L in compensation.

For the reasons I gave in my provisional decision, Coutts should also pay Mr and Mrs L £250 in light of the distress and inconvenience they've been caused.

My final decision

For the reasons given above and in my provisional decision and subsequent email, I uphold this complaint and direct Coutts & Company to pay Mr and Mrs L compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs L to accept or reject my decision before 6 March 2025.

Luke Gordon
Ombudsman