DRN-5776368

Financial Ombudsman Service

The complaint

The estate of Mr R has complained about the advice the late Mr R was given by George Square Financial Management Ltd ('George Square'). The estate says the advice was inappropriate for Mr R's needs, other options weren't adequately discussed and resulted in a detrimental impact on the estate. To put the matter right the estate wants the sum invested of £250,000 to be returned plus interest and £150,000 in compensation.

The estate is being represented by Mr R's two children – Mrs B and Mrs R – who are the executors and trustees of the trusts.

What happened

The late Mr R and his wife had been clients of a financial adviser since July 2015. They held several investments including bonds, direct equities, general investment accounts and ISAs. Sadly both Mr and Mrs R were diagnosed with cancer and sought advice from their adviser – who I shall refer to as the 'predecessor business/adviser' in my decision – but as he was winding down his business he passed them George Square in July 2021. George Square provided Mr and Mrs R with advice about how they could further mitigate inheritance tax ('IHT') upon their deaths. The advice was to invest into a higher risk AIM investment I shall refer to as 'Company T' in my decision.

Mr R went ahead with his investment in September 2021.

Mr R died January 2023, and the executors became unhappy with the advice he had been given. They said that Mr R was very unwell at the time of the advice and unlikely to have survived two years, the investment was too high risk and complex, he didn't understand the consequences if he was to die within two years and wasn't presented with alternatives. They raised a complaint with George Square.

George Square responded in October 2023 not upholding the complaint. It said;

- It detailed the background to the advice given in 2021 which came about because of Mr R's diagnosis and that the estate had increased from around £712,000 in April 2016 to £912,000 in July 2021 caused by growth in investments and the value of his home jointly held with his wife.
- While Mr R had been diagnosed with cancer there was nothing to suggest the seriousness of his prognosis and it wasn't mentioned by Mr R when he was advised he would need to live for two years to qualify for IHT relief offered by the Company T investment.
- The adviser relied upon information previously recorded about Mr R's circumstances.
- Mr R had been given the options of; doing nothing, investing into a bond in trust and the IHT liability would be reduced from year three to year seven or invest in a Business Relief plan – Company T – which invested in AIM listed shares and would fall outside of the estate after two years.
- Mrs B was involved in the advice given and didn't voice any concerns over Mr R's

health or mental capacity. A friend of Mr R's was also present at meetings held in April, August and October 2022.

- The suitability report clearly explained the higher investment risk and Mr R was fully aware it would take two years after investment to qualify for IHT relief.
- An increase in the level of risk Mr R was prepared to take investing in Company T was the only option for the two year time span for the sum to fall outside of the estate. The charges were fully explained.
- At the time of the death of Mrs R – in September 2021 – both her own and Mr R's funds hadn't been invested and could be returned. But Mr R was adamant his own investment should go ahead.
- The advice met Mr R's needs and it wasn't unreasonable for the adviser to have relied upon the information he was given. Mr R's children were involved in the advice process and didn't raise any concerns or expand on Mr R's health.

Our investigator who considered the complaint didn't think George Square needed to do anything more. She said;

- While Mr R was unwell at the time of the advice, there wasn't any evidence that his vulnerability prevented him from making informed decisions, rather, he wanted to review and organise his affairs.
- George Square was aware of Mr R's circumstances and ill health and tailored the advice given.
- The details of the high risk investment were given in communications with Mr R and that the investment into Company T would be excluded from the estate after two years.
- Mr R – and his wife – had sufficient investment knowledge so were aware of the tax implications for the estate and they didn't rush into making the investment decision.
- George Square wasn't aware of how advanced Mr R's cancer was.
- The investigator didn't find the advice was unsuitable or that the investment went ahead.

The executors didn't agree with the investigator. They said;

- The asset valuation carried out by the predecessor business exaggerated the value of Mr and Mrs R's estate. When Mr and Mrs R were passed to George Square it relied on the information given by the previous adviser.
- Rather than maximising the estate for the beneficiaries, Green Square focused on reducing IHT which wouldn't necessarily benefit the beneficiaries. And high risk AIM investment posed a significant risk of reducing the overall value of the estate.
- Other options weren't considered such as giving away surplus income which would have reduced the value of the estate for IHT purposes. The AIM investment lost the estate nearly £63,000.
- Fees of £10,000 were charged without George Square knowing its client and the advice was contrary to Mr R's objectives of leaving as much wealth to his family.
- Mr R had no intention of avoiding IHT purely for the sake of not paying tax at any cost but to ensure that as much of his wealth as possible was passed to the beneficiaries.
- George Square didn't establish Mr R's life expectancy or a realistic value of his

assets and so the advice given was flawed. Details were given of the actual value of the estate rather than the estimated value. It was a failing in itself that Mr R's life expectancy wasn't established. And the death of Mrs R should have prompted George Square to obtain more information.

- Reference was made to other decisions made by this service where poor health was core to the complaint. If more had been done, George Square would have found Mr R's cancer was stage four and terminal. Just recording his diagnosis and suggesting one shorter term option wasn't enough to make the advice suitable.
- Mr R could have used his annual £3,000 gift allowance, he had sufficient income to do so and it was a risk free option.
- Overall, George Square was wrong to focus on IHT mitigation, failed to advise about gifting, used language which would have led Mr R to feel he needed to reduce IHT and advised that a high risk option was the only feasible one.
- There were failings in the suitability report which evidenced George Square didn't know its clients.
- The executors had no record of any calls about the advice before Mr R died. Mr R was vulnerable and family members should have been invited to discuss the proposed course of action. There were no records of conversations which George Square said were had and it was obliged to keep.

George Square's adviser also responded to the investigator's request for call notes. While he didn't have telephone notes of the calls had with Mr R and Mr and Mrs R's children but he provided his recollections of what was said.

The additional submissions given by the executors didn't change the investigator's opinion about the complaint, so it has been passed to me to decide in my role as ombudsman.

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 conclusions as the investigator and broadly for the same reasons. I'll explain why.

Despite referring to Mr and Mrs R in parts of this decision, I am only considering estate's complaint about the advice given to the late Mr R. I am dealing with Mrs R's complaint separately.

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

Where the evidence or testimony presented to me is inconsistent or contradictory, I have to base my decision on the balance of probabilities and what I think more likely to have happened taking into account the individual circumstances of the complaint. To establish what I consider to be a fair and reasonable outcome to the executors' complaint I need to look at Mr R's circumstances, investment objectives and attitude to risk from the time of the sale to assess whether the advice given was suitable and matched his requirements.

- Mr R's circumstances

Mr R was 82 years of age in July 2021 at the time of the advice when he contacted the predecessor business and was passed to George Square. Mr R – and his wife – had both recently been diagnosed with cancer. I should like to express my sympathies to Mrs B and Mrs R for what must have been a very difficult time for the whole family.

I know the executors have disputed the value of the assets held in July 2021 and I comment on that later. But the suitability report of 5 August 2021 records Mr and Mrs R's current position as being;

- their home valued at £600,000,
- direct equity investments of £78,600
- three investment bonds valued at £342,267, two held by Mrs R and one by Mr R.
- Cash of £31,000 of which they wanted to retain £11,000 for emergencies.
- Mr R held an ISA valued at just over £247,000 which he was to reinvest into Company T's AIM ISA.
- Mr and Mrs R had an annual income of £51,150 and a net disposable monthly income of £1,051.

As I've already mentioned, the executors have commented on the valuation of Mr R's assets as stated by the adviser. I can see in the predecessor business' email of 9 March 2022 sent to Mr and Mrs R he said he had referred back to previous valuations of Mr and Mrs R's house which was £360,000 and ISAs pre Covid were valued at £380,000 and;

> '…which would in no way would have left you with a potential IHT liability…This was also the position in previous meeting[s] going back years. ….
>
> At our meeting last July you were unsure about the value of your home but were aware that houses in your area were selling for a lot more than previous…but we did go online together and check recent house sales…and this did point to at least a £200,000 to £250,000 increase in your house value. Also your overall investments had increased in value by £150,000 to £200,000 since our last pre-Covid review. Because of these unforeseen increases this would have left you with a potential IHT liability which was a total surprise for the 3 of us…'

The subsequent 'Statement of Assets for IHT purposes' provided by the predecessor business dated 16 July 2021 records that the house he jointly owned with Mrs R was valued at £600,000, the contents and car at £50,000 and gifts made in the previous seven years was £90,000. Joint assets totalled £1,694,000 which after taking into account the discounted gift trusts already held plus IHT allowances gave rise to a net estate for IHT purposes of just under £419,000.

However, Mr R's grant of probate confirmed the gross value of his estate – and post the death of his wife – was just over £795,500 and in their response to the investigator the executors have challenged the business' valuation of their late parent's assets. They say the valuation of the house was ambitious by more than £100,000, house contents and personal possession had been overestimated by nearly £50,000 and Mr and Mrs R jointly gifting £90,000 in the previous seven years was incorrect so shouldn't have been included unless the adviser sought more detail.

I accept the valuation for IHT purposes upon the death of Mr R was different than the predecessor business' valuation. But the adviser at the predecessor business had known Mr and Mrs R since July 2015 so was aware of their circumstances and I don't have any

reason to think he didn't correctly record the information given by Mr and Mrs R. Clearly, I can't know what was said between the predecessor business and Mr and Mrs R during their discussions about the valuations but I think it more likely the information stemmed from Mr and Mrs R than the business.

And I don't think it was unreasonable for George Square to have relied on the July 2021 valuation when giving the advice in August 2021 given the valuation which was recorded by their predecessor adviser, who had known their circumstances, and the advice were only one month apart. So overall, while I appreciate the executors' opinion that George Square could have done more in establishing in detail what Mr R's financial circumstances were, I don't think it acted unreasonably in relying on the recent valuation as provided by the predecessor business, and which I think most likely was provided by Mr and Mrs R, when giving the advice.

- Mr R's investment objective and attitude to risk

Geroge Square has told us that it was Mr and Mrs R who made the approach for advice after they had both been diagnosed with cancer. After the July 2021 meeting the predecessor adviser sent an initial email to Mr and Mrs R on 19 July 2021 – which I can see was forwarded to Mrs B by Mr R – to outline his thoughts and which confirmed they wanted to 'mitigate your IHT liability over the shortest term possible' and they were;

> 'prepared to take a higher level of risk to achieve this goal as you feel that to leave money invested as it would pose a higher risk on your deaths as it could incure [sic] 40% IHT liability…'

The subsequent suitability report produced by George Square also said the;

> 'primary objective is to reduce the IHT that would be liable for when both of you pass.'

Looking at Mr and Mrs R's circumstances, I don't think the conclusion reached about Mr R's investment objective was an unreasonable one to have reached. Clearly Mr R had used trust wrappers before and so was aware of the potential for IHT mitigation and potentially wanted to do the same for his assets held outside of those trusts. But because of his recent cancer diagnosis the time horizon of seven years for assets to fall outside of the estate – as with trusts – wasn't realistic and alternatives were to be considered.

And while Mr R's attitude to risk was usually lower than higher risk – the April 2015 suitability report records Mr R as having a 'moderately cautious' attitude to risk – for this investment he was willing to take more risk in exchange for the potential of reducing the IHT on his estate. And Mr R had over 25 years investment experience by this time so bearing this in mind, the risk questionnaire he had completed in the past and the recent risk assessment as referred to in the suitability report I don't think it's unreasonable to conclude Mr R was aware of the risk inherent in the higher risk AIM investment and was prepared to take it.

And the suitability report has a section on Mr R's attitude to risk where it is further discussed and which described the 'very adventurous' risk profile as being;

> 'You are prepared to take a substantial degree of risk with our investment in return for the prospect of the highest possible longer term investment performance. You appreciate that over some periods of time there can be significant falls, as well as rises, in the value of your investment and you may get back less than you invest. Adventurous investor will be invested entirely in equities, both in the UK and overseas. There may be a significant proportion of the investment in specialised

> equities. Because you are a very adventurous investor there will be slightly more invested in specialised equities.'

So overall, I'm satisfied Mr R was looking to mitigate the IHT liability that would be due on his estate and also had the investment knowledge and experience to accept a higher level of risk than usual in order to potentially benefit from the tax advantages offered by the AIM investment.

- The advice and was it suitable

As mentioned above, my understanding of the timeline that led to the advice is that the late Mr and Mrs R called George Square asking for a meeting to discuss their IHT situation. A meeting was held on 16 July 2021 with their predecessor adviser and the options were explained and followed up by email. A suitability report was prepared by George Stone on 5 August 2021 and a further meeting was held with the late Mr and Mrs R on 10 August 2021 where the report was presented and to establish whether there were any changes in their circumstances. Their predecessor adviser was also present during the meeting. And between the two meeting dates he had asked the adviser from George Square to telephone Mr R because he required further details about the investments. The George Square adviser was informed by Mr R that his daughter – Mrs B – was present and asked him to explain the proposed investment to her.

The shortened fact find of 10 August 2021 stated Mr R's objective was to;

> '…investigate what other options would be available to you to mitigate your IHT liability over the shortest term possible. You are prepared to take a high level of risk to achieve this goal as you feel strongly that to leave the money invested would pose a higher degree of risk on death as it could leave a 40% IHT liability to your two children and grandchildren. You want to invest for capital growth and you are both fully aware that potential losses could occur. This does not worry you to[o] much, particularly if your children can carry on the investment in their names after your death as they are also experienced investors. Should this happen, you are aware that the ISA status would be lost and, therefore, the investment would convert into a GIA [taxable general investment account]. Both your Children have been party to our interviews and fully understand the objective of their parents and what they are trying to achieve. [Mrs B] we have spoken to over the phone and they have been provided with all product literature and recommendation reports so they are fully informed throughout.'

For this investment Mr R's capacity for loss was recorded as high and was his risk tolerance.

George Square's 'replacement policy form' signed by both Mr R and his adviser dated 10 August 2021 recorded the costs and benefits of Mr R exiting his existing investment and reinvesting in Company T. It again restated he wanted to mitigate his IHT liability over the shortest term possible. And also that;

> 'No other alternatives were considered as you want the opportunity to obtain 100% exemption from IHT after just two years'.

Mr R was;

> 'prepared to take a high level of risk to achieve this goal as you feel that to leave the money invested with [current provider] would pose a higher risk on your death as it would incur a 40% IHT liability to your two children and grandchildren.'

The suitability report said;

> 'There are a number of ways to reduce your IHT liability, including the use of trusts. However, these will typically take up to seven years to become fully effective and often necessitate a permanent loss of control and access to your money.'

The report also explained that the value of Mr R's ISA would be included in his estate for IHT purposes and it further outlined the IHT position of the proposed investment;

> '[Company T] is an IHT planning service that invests in a carefully selected and professionally manage portfolio of BR qualifying AIM companies, offering the opportunity to obtain 100% exemption from IHT after just two years. The two-year period starts immediately after the shares are acquired.'

Under 'The Inheritance Tax problem' section of the suitability report it also said the investment was;

> 'a simple and effective IHT service, designed to take advantage of Business Relief, which can allow investments to become fully exempt from IHT in only two years.'

And under the 'Background to Business Relief' it said;

> 'Provided that the qualifying investments are held for two years prior to, and including at, the date of death, they become fully exempt from IHT.'

Further, in the 'Taxation' section it said;

> 'The value of your ISAs will be included in your estate for Inheritance Tax purposes on your death (except ISAs invested in shares listed on alternative investment markets that may qualify for Business Relief).'

So, I am satisfied Mr R was made aware the investment would only be exempt from IHT after two years but that the funds invested would fall back into his estate if he didn't survive that length of time. And I think Mr R was prepared to take that risk in the hope of removing the capital invested from his estate.

I note there were two errors in the suitability report which stated Mr and Mrs R were looking for advice about their pensions and held a large property portfolio which wasn't the case. But the error about the property wasn't duplicated in the 'Your Current Position' section of the report so I don't think that impacts on the overall suitability of the advice as it was only referred to as providing additional income if required. And it's recorded that Mr and Mrs R were in a comfortable financial position with an annual income of over £50,000 so the advice that was given – for the investment of capital – wouldn't have been a factor when considering the affordability of the investment or Mr R's capacity for loss when it came to their income.

The suitability report and the 'replacement policy form' also laid out the initial advice fee, dealing fee, annual management fee and ongoing adviser charges. So, while I accept the executors aren't happy about the fees charged for what they say was unsuitable advice, I'm satisfied the information given to Mr R about the costs was clear and he accepted those charges.

- Vulnerability

Clearly Mr R made George Square aware of his cancer diagnosis, but I'm not persuaded Mr R didn't have the mental or physical capacity to make an informed investment decision. I say this because he and his wife were proactive in contacting the business to seek advice about IHT mitigation and then met with the adviser twice. While I accept it is after the event of the point of sale, I note that Mr R continued to meet with his adviser with a friend he had recommended the investment to. This suggests to me there were continued conversations about the investment and Mr R was actively interested in it. So, while I accept Mr R's health was poor, I haven't been presented with anything to convince me he was incapacitated by his illness to the extent that he wasn't capable of receiving and understanding the investment advice that was given to him.

And George Square has told us Mr and Mrs R's children were aware of and involved in the investment advice. As referred to above the initial advice email given in July 2021 was forwarded onto Mrs B and I'm satisfied its more likely she was present during the telephone conversation between the two meetings. Mrs B and Mrs R say they have no record of any calls or being invited to any review meetings about the advice. But I note the suitability report says;

> 'Your children, [Mrs B and Mrs R] are fully aware of the advice you are trying to [sic] and trying to reduce the level of IHT they would be liable for when you both pass. They have been provided with all product literature. [Mrs B] is a current client of ours and we have discussed your IHT problem and proposed recommendation over the telephone. [Mrs B] is also an experienced investor and she understands what needs to be done and the risks involved to try and achieve your goals and objective.'

As mentioned, George Square told us that during a telephone call with Mr R prior to the application to invest Mrs B was also present. Our investigator asked for copies of the call notes, but disappointingly it told us it didn't retain them, however the adviser provided his recollection. But I'm persuaded it's more likely than not that a conversation was had as it is referred to in the suitability report of 5 August 2021 and the Investment Review of 10 August 2021;

> 'Both your Children have been party to our interviews and fully understand the objective of their parents and what they are trying to achieve. [Mrs B] we have spoken to over the phone and they have been provided with all product literature and recommended reports so they are fully informed throughout.'

I can't see why such a comment would be included in the suitability report and Investment Review if the children weren't included in or aware of the investment advice given. Both documents are signed by Mr R so if there was anything in those documents that was incorrect, I would have expected it to be challenged. And I haven't seen anything to persuade me that Mr R's illness would have prevented him from doing so.

The executors have said that George Square should have done more to find out details of Mr R's health and its prognosis – he had stage four cancer. George Square has said that at no time did Mr R – or Mrs B – make him aware that his cancer was stage four when the prognosis was discussed at the meeting which it took at face value.

While I accept George Square could have asked more probing questions to establish Mr R's life expectancy after diagnosis, but I haven't seen anything to suggest that either Mrs B or Mr R said anything to George Square about his prognosis when the advice was given or that Mr R wouldn't have gone ahead and taken the same investment decision that he did. I say this because it's evident that once Mr R was aware of his poor health, he and his wife were the one to instigate advice about tax mitigation. And I'm satisfied it was clearly explained to

him that he would need to live for a further two years after investing and that he was willing to take that risk bearing in mind his cancer diagnosis.

The executors have referred to other decisions made by this service where poor health has been a factor. But decisions made by any ombudsman don't set a precedent. This is because we consider complaints on their own particular merits and individual circumstances. And in this case I'm not persuaded that by George Square knowing more about Mr R's health would have changed its recommendations or Mr R's decision to invest as it wasn't known how much longer he would have survived.

However, while AIM investment was the quickest way to remove the capital from the estate I do appreciate that there were probably other options available to Mr R at the time that could have potentially offered him mitigation from IHT – giving away income as an example. But my role isn't to re-visit the advice that he was given and what other options were potentially available to him. Rather it's to consider whether the advice that was given to Mr R was suitable for him at the time and as identified prior to the investment and whether it was sufficiently explained to him. And I am satisfied it was.

Taking all the above into consideration, and in the individual circumstances of this complaint, I don't find that the advice given to Mr R was unsuitable for him bearing in mind his personal and financial circumstances, his attitude to risk and his investment requirements. It follows that I don't uphold the executors' complaint.

No doubt the executors will be disappointed in the outcome. It's clear they understandably feel strongly about it and I would like to thank them for the time and effort spend in bringing the complaint. But I hope I have been able to explain how and why I have reached my decision.

My final decision

For the reasons give, I don't uphold the estate of Mr R's complaint about George Square Financial Management Ltd.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr R to accept or reject my decision before 12 November 2025.

Catherine Langley
Ombudsman