

The complaint

Mrs B and Mrs M as trustees of the E Trust have complained about the service they received from PK Financial Planning LLP, trading as PK Group ('PK'). They say they paid more tax than they would otherwise have done if they had been appropriately advised and they would like this repaid to them.

What happened

The settlor of the E Trust invested £200,000 into an offshore investment bond policy ('the policy') within the trust in 2005 for the purposes of tax efficiency. The advice to do so was given by the adviser being complained about while he was at a different investment firm. The adviser left the previous business to join PK in 2008, and the settlor completed a new client agreement.

After the death of the settlor the trustees, who were also the beneficiaries, distributed the assets of the trust in September 2021 but incurred a tax bill of £52,000. The surrender was tax at the trust rate of 45% whereas if it had been assigned prior to surrender the tax payable would have been less. So, the Trust has suffered a loss as it had less to distribute to the beneficiaries. As Mrs B and Mrs M were basic rate taxpayers, they expected to be able to reclaim the tax that had been charged at the higher rate but to do so the policy bond needed to have been assigned prior to distribution. This didn't happen and the trustees are of the opinion they should have been advised to do so by PK or been told to seek tax advice.

The trustees say the policy in trust was set up to produce a return for the beneficiaries upon the death of the settlor and that PK should have known it was entirely foreseeable that if the policy wasn't surrendered correctly then more tax would be payable. They say PK had a duty of care to the beneficiaries.

The trustees raised a complaint with PK in November 2023. In response it said;

- The trust had been set up by the adviser's previous employer.
- The trustees and beneficiaries were never clients of PK.
- The trustees requested assistance in encashment but not advice.
- The trustees had confirmed that they had taken advice about the tax consequences of encashment.
- PK had offered a referral if one off tax advice was needed, which the trustees declined by saying they would speak with an accountant.
- Neither the adviser nor PK claimed to be tax specialists.
- It didn't uphold the complaint but did offer the two trustees £500 each for incorrect information they were given after the encashment about reclaiming the tax.

Unhappy with the outcome, the trustees brought their complaint to the Financial Ombudsman Service. Our investigator who considered the complaint thought that PK needed to do more. He said;

- While the trustees weren't customers of PK, they did approach the adviser about what the investigator considered to be a complex investment, and he thought it was reasonable to expect the adviser to have provided the trustees with enough information for them to understand the implications of their decision or advise they should seek independent tax advice.
- The trustees believed they had sought professional advice when signing the surrender form.
- The adviser was the regulated entity. He was in a position of knowledge and of trust, given his prior involvement. He should have been proactive in pointing out the nature of the policy and possible tax implications even if he didn't provide actual tax advice.
- PK should pay the difference between the tax paid by the trustees and the amount they would have paid if the policy had been assigned prior to distribution plus interest. He thought the £1,000 already paid for the distress and inconvenience caused was sufficient.

The trustees responded to say they hadn't been paid the £1,000 offered.

PK didn't agree with the investigator's opinion. It said;

- No advice was given to or sought by the trustees. The adviser hadn't indicated or implied that he was providing tax advice. He only executed the trustee's instructions. No advisory relationship had been established with the trustees, and no advice was sought or paid for.
- It was the responsibility of the trustees to understand the tax and financial implications of their actions in managing the estate. It referred to the rules around giving suitable advice.
- The adviser was entitled to rely on the fact that the trustees had confirmed they received the necessary tax advice as indicated by their signature on the surrender form. The adviser had no knowledge of the trustees' or beneficiaries' financial circumstances, which would have been needed for the adviser to give advice.
- That PK was liable for the tax consequences was unfounded and unfair.

Our investigator remained of the opinion that the adviser should have informed the trustees he couldn't help in any capacity. By deciding to help in some capacity the adviser should have made clear the surrender wasn't going to be a straightforward transaction and advice would be needed. PK didn't agree:

- The adviser's role wasn't to initiate a new client relationship.
- The adviser had moved from his previous firm – where he advised the settlor – and wasn't obligated to initiate a new agreement with former customers unless a new agreement was established. And the trustees weren't former customers of his. Tax advice was provided by a third-party accountant, and PK didn't provide advice as no fee was charged.
- The trustees had an obligation to seek formal advice if they were unclear about the implications of their decisions.
- The adviser was only acting on directions of the trustees.
- The redress recommended was unfair and unreasonable. Interaction between the adviser and the trustees didn't establish any new fiduciary duty or advisory relationship which would warrant the proposed redress.

The complaint remained unresolved, so it was passed to me for a decision in my role as ombudsman. After considering all the available evidence and arguments to decide what was fair and reasonable in the circumstances of this complaint I issued a provisional decision as I wanted to clarify this service's jurisdiction to consider the complaint and provide further reasoning as to the merits. Here's what I said;

'Before considering the merits of a complaint I need to be satisfied that I have jurisdiction to do so. In many cases it is unnecessary to refer to this, as it is clear there is no issue about our jurisdiction. However, in this case I think it is necessary for me to address our jurisdiction, given PK has said that the trustees were not clients and the investigator has in effect accepted this in his opinion.

Do we have jurisdiction to consider this complaint?

This service can't consider all the complaints we receive and the rules governing this are set out by the Financial Conduct Authority ('FCA') in the Dispute Resolution section of their Handbook ('DISP').

These rules set out which complaints are in our jurisdiction, based on several factors, and each must be satisfied for our service to have jurisdiction. The element that I must consider here is set out at DISP 2.7, which says a complaint may only be dealt with by our service if it is brought by or on behalf of an eligible complainant.

There is a two-part test to decide if a complainant is eligible, the first part of which is set out at DISP 2.7.3. The relevant part of this rule says that to be eligible, the complainant must be a certain type of person, which includes a consumer and a trustee. Mrs B and Mrs M are the latter in relation to the advice – or lack of it with regard to the trust being complained about.

So, they satisfy this part of the test.

The second part of the test is set out at DISP 2.7.6 – it says:

'To be an eligible complainant a person must also have a complaint which arises from matters relevant to one or more of the following relationships with the respondent:

- (1) the complainant is (or was) a customer, payment service user or electronic money holder of the respondent;
- (2) the complainant is (or was) a potential customer, payment service user or electronic money holder of the respondent;' [my emphasis]

Though the list is longer than those two options, I'm satisfied that those are the only two relationships from the list that might apply to this situation – whether Mrs B and Mrs M were customers, or potential customers. It's this second part of the test – whether Mrs B and Mrs M had one of the relevant relationships with PK out of which their complaint arises that I need to consider.

The word 'customer' is not defined in the rules and so it has its natural meaning. When deciding whether Mrs B and Mrs M were customers of PK, I've thought about the meaning of the word customer. In general, based on the dictionary definition, I consider this to include being a person to whom goods and/or services are directed toward or provided to.

And in this case, I think the service provided was in PK giving advice. PK say this didn't happen and that no advice was given but I'll explain why I disagree and what this means for the jurisdiction of the complaint.

The settlor died at the end of 2020. The trustees of the E Trust were also the settlor's children as well as beneficiaries of the trust and his estate. I can see in March 2021 the settlor's adviser helped the trustees in the administration of the estate with paperwork for the settlor's tax return, valuations of assets from different providers including the policy held in trust and claim forms for those assets etc.

As part of the complaint process, PK contacted the adviser – who no longer works with PK – who dealt with the estate/trust and asked whether any advice was given. He responded to say;

'They [the trustees] did not seek any advice in connection with the death claims and I am unsure whether they encashed directly or through PK Financial Planning LLP...

The advice given was after encashment when I sought advice from [colleague] on whether as beneficiaries, they would be able to claim back the additional tax relief...'

The adviser's recollection regarding the trust was that he was trying to get a valuation for probate purposes.

But I don't agree with this recollection, as the evidence shows advice was given by him. I say this because I can see from the email conversations that in March 2021 the trustees requested a meeting, once estate and trust valuations were up to date, to discuss the investments and;

'...how we should deal with each of the investments, ie whether they are performing well and should be transferred to our names as beneficiaries, or whether you think the proceeds would be better invested elsewhere.'

In response to this point on 23 March 2021 the adviser said;

'In respect of the investments, markets appear to be treading water at the moment so I am not recommending any switches are necessary at the time.'

The FCA's Perimeter Guidance ('PERG') manual gives its view about that advice is;

'PERG 8.28 Advice or information

PERG 8.28.1G01/04/2013RP

In the FCA's view, advice requires an element of opinion on the part of the adviser. In effect, it is a recommendation as to a course of action. Information, on the other hand, involves statements of fact or figures.'

I am satisfied the contents of the adviser's email of 23 March 2021 did recommend a course of action – namely not to carry out any switches - and so constituted advice. So, bearing in mind the trustees sought advice about what action to take with the investments and the adviser responded with his recommendation about that, I don't think it was unreasonable for the trustees to have concluded they were being given advice by PK.

While our investigator thought no advice was given to the trustees, and PK thinks the same, in my opinion I think it's clear from the above PK was giving advice about the investments held in the trust/estate. It follows that, as I am satisfied PK provided the trustees advice when they were potential customers, then this is a complaint our service can consider. So, I've gone on to consider the merits of the complaint, in particular the advice that was given.

The advice

I'm satisfied that the adviser's email of 23 March 2021 did constitute advice, as I have already said above. While that may not have specifically been about the tax position of trust assets in the hands of the beneficiaries, I do think it gave the trustees a level of comfort that they were receiving advice about all the assets which came about as a result of the death of their father and which included the trust's policy, which they went on to surrender. And I also think it wasn't unreasonable for the trustees to assume that advice was given by a regulated financial firm which they could rely on.

In additional correspondence in April 2021 the adviser said;

'In respect of the [trust policy], this does not form part of your Father's estate as it is written under trust with yourself and [fellow trustee] as trustees and beneficiaries. I have requested confirmation from them of the process of surrender, should you so wish, and a calculation of the chargeable event for income tax purposes, this would give rise to. Once I have more detail from them, I will discuss this plan with you.'

I've not been presented with anything to show what was later discussed about the plan, but it's clear the adviser was supporting the trustees with the Trust's assets. And whatever was discussed between PK and the trustees, it ultimately led to them surrendering the policy.

While I can't know that for sure what was discussed I am satisfied the trustees went about the surrender of the Trust's investment bond on the basis PK was aware of their intentions in its role as a regulated adviser from which they had been receiving advice. I say this particularly bearing in mind their lack of financial experience and them seeking advice and guidance from the adviser in the first place.

Clearly their adviser had gone about finding out the process for surrendering the policy and a calculation of the chargeable event for income tax purposes if they were to proceed. And as the adviser was the person who had recommended the use of the trust for tax purposes to the settlor in the first instance, I think it's only reasonable to conclude he should also have known what the tax consequences could be upon surrender and disbursement of the Trust's assets which would include the income tax reclaim impact on the beneficiaries. If the adviser wasn't in the position to advise on the tax impact, then he should have informed the trustees about this prior to them surrendering the policy.

Taking all the above into account, I think it was more likely than not that the trustees were reasonably under the impression they were receiving advice from the adviser. And I don't think it's reasonable to have expected the trustees to have recognised the advice may not have extended to tax advice about the Trust's investment policy and its surrender.

I think the trustees understanding that the adviser was responsible for providing advice on the tax consequences of surrender is evidenced by the fact they went on to complete and sign the bond's 'Withdrawal/Surrender Request' completed on 27 July 2021, on the basis they had received advice. That surrender document said;

'I/We confirm that I/we have taken appropriate independent advice from a professional source in relation to the tax consequences of the options offered below;

...'

PK disagrees with this and with reference to this surrender statement it has referred to the FCA's Conduct of Business Sourcebook and COBS 2.1.2R which says that a firm is allowed to rely on the accuracy of information provided by the client unless it is manifestly incorrect. And it said the adviser had every reason to rely on the above statement that the trustees had received tax advice. But as I have already said, I can't see there is any way the trustees would have known that when it came to the Trust, they were not receiving advice about the surrender when they had been advised about other elements of the estate and had a discussion with their adviser about the Trust sometime after April 2021, at the adviser's request.

And I think this is why they contacted the adviser in 2022/2023 seeking further guidance on their tax positions, that had come about because of the surrender of the policy.

The trustees' complaint is that the adviser 'liaised with [the policy provider] to distribute the funds, and arranged all the necessary paperwork to effect the distribution.' I have sympathy with the trustees here as I haven't seen anything to disabuse them of that view. Out of the two parties, PK was the one in the position of knowledge in its role as a regulated financial adviser.

In response to the investigator PK referred to the regulator's principles and in particular Principle 7 (which it wrongly identified as Principle 6);

'A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.'

It says this emphasises the importance of clarity from both parties and that trustees had a responsibility to seek formal advice. But I don't think that's relevant here, as the trustees weren't the regulated party in this relationship.

I believe by turning to PK and its adviser – who had advised their father about his other investments and set up of the trust for tax planning purposes, and continued to advise him – it wasn't unreasonable for the trustees to have concluded the adviser was providing them with advice about the investments and the surrender of the Trust's policy. Bearing in mind the adviser's position of knowledge, I think he should have recognised it wasn't unforeseeable that tax would be due on surrender without advice to assign to the beneficiaries in advance.

I appreciate the adviser wasn't a tax adviser, as evidenced from correspondence after the surrender of the bond when the beneficiaries contacted him in August 2022 and January 2023. But the policy had been surrendered by this time, in September 2021.

I also accept both emails make clear that the adviser didn't either present or see himself as a tax adviser. But because PK was in a position of knowledge and did give investment advice to the trustees about the investments, if the adviser wasn't in the position to help with the tax impact of the surrender of the Trust's policy he should have informed the trustees of this prior to surrender. And I think the adviser had the opportunity to do so prior to surrender, as evidenced by the communications had with the trustees in and around April 2021.

Overall, as it was the same adviser who advised the settlor about the Trust, I don't think it's unreasonable to conclude he was likely to have understood the mechanics of it, including its surrender and the potential tax implications for the Trust and beneficiaries that could arise from this. The adviser had provided advice to the trustees, and I think they presented themselves as being reliant on the adviser. So, if the adviser couldn't give tax advice he should have informed the trustees that they needed to seek independent advice about that prior to surrender. I think by not doing so, the trustees were not unreasonably under the impression they were acting under the auspices of a regulated financial firm, bearing in mind the other advice and support they had been provided.

It follows that I think PK has done something wrong and as result, more tax has been paid than would otherwise have been the case if the trustees had been appropriately advised to seek tax advice. And this needs to be put right.'

I said PK should pay Mrs B and Mrs M the difference between the tax they did pay and the tax they would otherwise have paid if the policy had been assigned to them before its surrender – so as beneficiaries rather than trustees. Interest should be added to the date of payment. I didn't make a finding on the £1,000 PK had previously offered as it didn't stem from the complaint and it was for the parties to resolve outside of my decision.

Mrs B responded on her own behalf and her fellow trustee, Mrs M. They both accepted my provisional findings. PK replied to say it had nothing further to add and would carry out my instructions on receipt of the appropriate evidence of the Mrs B and Mrs M' tax rates and amounts paid to HMRC.

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 neither party has disagreed with the findings in my provisional decision, I confirm those findings and uphold the complaint. For completeness I reiterate below how the matter should be put right. And Mrs B and Mrs M will need to provide evidence of the amounts and payment dates of the tax to PK in order for it to be able to carry out the necessary calculations.

Putting things right

As neither party has disagreed with the findings in my provisional decision, I confirm those findings and uphold the complaint. For completeness I reiterate below how the matter should be put right. And Mrs B and Mrs M will need to provide evidence of the amounts and payment dates of the tax to PK in order for it to be able to carry out the necessary calculations.

My final decision

For the reasons given, I uphold the trustees of the E Trust's complaint about PK Financial Planning LLP, trading as PK Group and the matter should be put right as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B and Mrs M as the Trustees of the E Trust to accept or reject my decision before 24 September 2025.

Catherine Langley
Ombudsman