

The complaint

Ms C has complained about the investment advice she received from Coutts & Company, trading as Coutts ('Coutts'). Ms C would like compensation as she says she and her family will be significantly worse off because of the advice.

Ms C is represented in bringing her complaint, but for ease of reading I shall refer to 'Ms C' throughout my decision.

What happened

In 2010 Ms C was recently divorced and had a large sum of money to invest. She was advised by Coutts to invest into an offshore bond.

When Ms C moved to her new adviser in 2020 this advice was reviewed, and as a result, a complaint was raised with Coutts in August 2021. Ms C said she was a UK resident at the time of the advice and Coutts hadn't taken into account that she was to move back to France. She also said the suitability report that led to the investment was flawed and contradictory. Coutts responded on 24 May 2022. It didn't uphold the complaint;

- It thought the complaint had been made out of time.
- Coutts had introduced Ms C to an English/French tax adviser in October 2016 because of her intention to leave the UK 'and the ever evolving tax legislation in France'. That adviser informed Ms C that one element of the bond which wouldn't be as advantageous was the withdrawals in France as the bond was registered in the Isle of Man and not part of the European Union.
- Ms C decided not to come out of the bond as it could be passed to Ms C's three children upon her death. Ms C's tax adviser found the bond to have strong inheritance tax benefits. Ms C was to take the accumulated 5% withdrawal facility.
- Even though the bond was registered in the Isle of Man Ms C's three children would benefit from the 'particular strong French inheritance tax benefits' – the reduced rate of French inheritance on their respective share of the bond upon Ms C's death.

Unhappy with the outcome Ms C brought her complaint to the Financial Ombudsman Service. She had concerns about the suitability of the advice, inaccuracies in the suitability report, lack of use made of UK tax allowances, lack of cash reserves and no consideration of the future changes in her circumstances.

A fellow ombudsman decided it was a complaint we could look at under the time limits that apply to bringing a complaint to this service. The investigator went on consider the merits of the complaint but didn't think it should be upheld;

- He focused on income withdrawals in the UK and estate planning in France.
- There was limited information available from the time of the advice in 2010, so he reached his findings based on that information and the comments made by the parties.

- There were contradictions in the suitability report, but the investigator wasn't convinced this resulted in unsuitable advice being given.
- Coutts' advice was based on the fact that Ms C was to remain in the UK for at least three years, but it had clarified taxes would differ outside of the UK and Ms C should obtain tax advice.
- The investigator wasn't persuaded the advice to invest into the bond was unsuitable. The recommendation was consistent with Ms C's attitude to risk and Ms C held separate funds to finance a property purchase. It would provide an annual income and allowed Ms C to gift parts of the bond to family members, which was an objective.

Ms C didn't agree. She said Coutts miscategorised her UK tax status and ignored her available tax allowances and exemptions. She should never have been advised to invest into the offshore bond within a wrapper which was costlier in fees and taxes. It was illogical for Coutts to have ignored French tax rules when the bond was set up for 99 years and Ms C was returning to France in a few years.

As the complaint remained unresolved, it was passed to me for a decision in my role as ombudsman.

After considering the evidence and arguments to decide what was fair and reasonable in the circumstances of the complaint, I was thinking of reaching a different conclusion than the investigator. So, I issued an initial and a second provisional decision to allow the parties to provide me with anything more they wanted me to consider before I issued my final decision. Here's what I said;

'I'm aware I've set out the background to this complaint in less detail than the parties and I've done so using my own words. The Financial Ombudsman Service was set up to be a quick and informal alternative to the courts. And the purpose of this decision is to explain what I think is fair and reasonable in the circumstances, not to offer a point-by-point response to everything the parties to the complaint have said. So, I will not refer to every submission, comment, or relevant consideration. Instead, my decision sets out what I think are the most important points in order to explain my decision in a way that is intended to be clear and easy to understand.

In order to consider whether Coutts provided Ms C with suitable advice I've looked to see what information was gathered by Coutts about Ms C's circumstances, investment objectives, attitude to risk and the resulting advice.

However, in this case there is little evidence available from the time of the sale other than the suitability report. But I don't find this surprising as businesses aren't obliged to keep paperwork indefinitely, Ms C was no longer a client of Coutts after 2020 – post Brexit – and the advice was given over 15 years ago. That being the case, when the information or evidence I am presented with by the parties is contradictory or limited, I have to base my decision on the information and evidence I do have and on the balance of probability and what I consider to most likely have happened.

Ms C's circumstances and advice

I've taken into account what Ms C has told us about her circumstances at the time the advice was given in 2010 and as recorded in Coutts' suitability letter of 14 December 2010;

- Ms C was 60 years of age, recently divorced, had just sold her main

residence for £4.3m and was recorded by Coutts as being a higher rate tax payer. She had three grown-up independent children.

- Ms C was resident in the UK, but non domiciled, and was not going to return to France within the next three years as a minimum.
- Ms C was living in rented accommodation but intended on buying a property in either the UK or France but would still live in the UK for the immediate future.
- Ms C had assets of just over £4.7m which came about because of her house sale;
 - £1.7m was held in a Coutts current account.
 - A further £1.2m was earmarked for a property purchase.
 - £1.8m was invested into a French 'Insurance Fund' which Coutts referred to as being for wealth preservation.
 - Ms C was to keep £68,000 on deposit, being the following year's income and potential ISA investment.
 - From the funds available for investment Ms C wanted an annual income of £50,000 as she had no other source of income.
- Ms C also wanted to ensure the money would benefit her children and grandchildren. This later became the sole reason for the investment.
- The suitability letter recorded Ms C had taken advantage of the £325,000 nil rate band in her will but hadn't used her capital gains tax ('CGT') or ISA allowances for that tax year. The suitability letter said that was to be addressed later in the tax year.
- Ms C was advised to remove funds of £1,150,000 from Coutts' 'Wealth Preservation' – which I take to mean her Coutts current account – and reinvest into an AXA offshore bond wrapper which itself would be invested;
 - £575,000 into the low-risk Coutts Discretionary Investment Portfolio ('DIMA') for 'Wealth Enhancement' and
 - £584,000 into four collective investments for the purpose of 'Enhancement'.
 - An additional £88,750 was to be retained in a bank account as a reserve for the first year's income and expenses.
 - An annual income of 5% could be taken from the bond, the liability for which would be rolled up.

As it turned out, Ms C remained in the UK living in a rental property before moving back to France in 2016/2017 and spent very little on the property she later bought so only used a small amount of the original budget and didn't take any withdrawals from the bond. And this remained the case with the exception of a withdrawal of £402,500 – the accumulated income – just before her return to France for tax planning reasons as recommended by her French/English tax adviser.

Ms C's attitude to risk

The suitability report stated that Ms C wasn't an experienced investor and looking at her circumstances I think this seems likely as she was recently divorced, had sold her principal residence and was managing her own money for the first time. But there's nothing from the time of the sale to show how Ms C's 'moderate' attitude to risk was established other than the comment that the adviser had 'explained the Coutts Wealth categories to her...with particular reference to the day to day volatility inherent in each category'. Coutts hasn't been able to provide anything further around this.

However, the suitability report records Ms C didn't want to take undue risks as she was reliant upon the capital 'to generate an income to enable you to live comfortably' and she wished 'to invest your cash funds to generate income during your retirement.' It's also recorded that Ms C 'wanted to invest with the potential of some capital growth without taking any undue risk with your capital.'

Just under half of the funds were invested into the Enhancement/Medium Term DIMA which was described as a 'Low risk portfolio invested into a mixture of assets and actively managed by Coutts' over a three-to-five-year horizon. The remainder was to be invested for 'Enhancement' in collective investments which were to provide diversification and opportunities for returns in falling markets.

While its clear the funds Ms C had were important to her, and in effect represented her pension, from what I have seen of Ms C's circumstances and investment objectives I don't find the risks posed in underlying investments to have been unsuitable for her.

The offshore bond

Ms C was advised to invest into an offshore bond. The investment was a capital redemption bond with a term of 99 years which could be encashed or surrendered earlier but penalties would apply.

For an offshore bond no UK taxes are paid by the underlying funds which allows for the amount invested to grow without the same deductions that would apply to an onshore bond – so called gross roll up. Withdrawals of up to 5% per year could be taken tax free. Upon full surrender of the bond the chargeable gain would be taxable at the investor's full marginal rate of income tax. Any gains made could be reduced by either 'top slicing' or 'time apportionment relief'.

Ms C has told us that for offshore bonds they lose all the benefits once the investor becomes a French resident unless it's structured as a French compliant 'Assurance Vie' – which Ms C's wasn't. And looking at the offshore recommendation, I'm not convinced there was any need for Ms C to have held her investments – which in themselves I don't find unsuitable – within an offshore wrapper rather than just holding them onshore. But I explain why further in my decision.

The advice and was it suitable

There was a meaningful error in the suitability report. Despite it being recorded that Ms C had no source of income and was only living off bank interest, the letter went onto say;

'You will remain a higher rate taxpayer for the foreseeable future'.

It later said;

'You are currently a higher rate taxpayer however and anticipate remaining so for the immediate future. However, the Bond offers you the opportunity to encash at a time when you are subject to a lower rate of tax, a full or partial encashment may be subject to the basic rates of tax or possibly no UK tax at all. As such, I consider the offshore bond to be a suitable investment for you because you can benefit from investing in a tax efficient bond, and defer the creation of a tax liability until a time when you anticipate being taxed more favourably.'

In this case, Ms C wasn't a higher rate taxpayer, she was a nil rate taxpayer and was already not working – she was a homemaker – and so deferment until retirement, or similar, didn't need to be a consideration as part of the advice given and she could have avoided building up a larger tax bill in the future.

So, the stated advantage of being able to encash the bond when Ms C was to become a lower rate taxpayer – usually upon retirement – didn't apply and makes me question the suitability of the advice to invest within the offshore wrapper. I say this because the advice was given based on a significant misunderstanding of Ms C's tax rate.

Ms C did want to 'have the opportunity of flexibility for future tax planning' and Coutts said the offshore bond structure offered the opportunity to assign segments to Ms C's children in the future to assist with IHT planning. But no consideration was given to Ms C assigning segments when she had returned to France where the gifting rules are very different. Ms C has told us that as she was a French domicile after being in France for four years, UK IHT would no longer have been a consideration for her.

Coutts was aware of Ms C's intention to return to France, but the suitability report doesn't make any significant reference to this, only generic paragraphs which look to me as though they are from a template rather than personalised for Ms C's circumstances and known objectives. And I don't think the general warnings given about Ms C seeking tax advice override Coutts' responsibility to act in its customers best interests.

Coutts has told us it does not provide 'holistic tax advice';

'but we will consider a client's tax objectives when giving investment advice or wealth planning advice. However, this is limited in scope to advice relating to the investment recommendations or wealth planning considerations, not the broader client circumstances (for example, we would not discuss tax relating to any employment or business income streams) and is always limited to the tax treatment in the UK.'

But while Coutts has told us it limits advice to the tax treatment in the UK, the advice given to Ms C in 2010 was based on its knowledge it was Ms C's intention to return to France in the foreseeable future and her stated need for 'future tax planning'. So, it makes me question whether Coutts should have told Ms C to take advice elsewhere if it wasn't in the position to offer advice based on her stated circumstances and investment objectives. And I don't think this is offset by its generalised statements about seeking tax advice.

The suitability report went on to say;

'...Accepting your requirements [to generate an income of £50,000] it seems appropriate to concentrate on Wealth Enhancement Medium-Term investment of between 3 to 5 years. After which time you may consider moving back to France...It is not your intention to disinvest within 3-5 years and therefore the funds may remain invested for as long as required, either within the Coutts DIMA or in alternative investments. There are penalties applied for early encashment ...'

Clearly penalties would apply if Ms C were to encash the bond early. It's difficult to justify why the bond was recommended bearing in mind her tax position would inevitably change once she returned to France – and encashment may not have been unlikely – and would have incurred penalties.

And while Coutts knew Ms C's intention was to repatriate, there's no evidence of any meaningful consideration to the tax Ms C would incur on the bond when she did move abroad other than that it wasn't known. The suitability letter said;

'Any gains realised once you become non-resident will not be taxable in the UK, but may be subject to taxes in your country of residence. The actual rate of tax that may be applicable would therefore depend upon your country of residence at the time of the encashment, but may be higher or lower than that, which would apply in the UK. The underlying investments can remain within the bond when you move abroad, and in some countries can continue to grow with little or no tax.'

I consider an offshore bond to be suitable for you as you do not intend to encash the bonds in full or in part until you have moved overseas and become non-resident, and any gains will not therefore be subject to UK tax. As such there would be no advantage to be gained by holdings assets onshore in order to use the capital gains tax exemption. Additionally the underlying investments can grow in a tax efficient environment regardless of your country of residence. Some countries have wealth taxes and the bond may be subject to these, and if you encash there may be local tax to pay in that country.'

The above doesn't make sense to me. Coutts was advising on the basis that Ms C wasn't going to encash the bond until she moved overseas but it didn't know the implications of that. As referred to above, Coutts has said it's not a tax expert and I can see it made the following comments about this;

'You should also obtain such tax advice from your own tax adviser, as you consider necessary.'

And further on in the suitability letter it said;

'This is especially important in the case of leaving the UK as the tax treatment of any investment will differ from country to country and as a UK financial planner we cannot advise on non-UK jurisdictions.'

However, my reading of the suitability report is that Coutts was fully aware of Ms C's intentions to move back to France – sometime in the short/medium term. So, I find it difficult to understand why it didn't take that point into account when recommending an offshore bond, and Ms C's inevitably changing tax position, when it wasn't in the position to give advice on that. And I don't think it unlikely Ms C's circumstances or investment objectives were likely to change bearing in mind the recent significant

transition in her life and her future known return to France. While the suitability report does say;

‘I would confirm that my advice is based on you returning to France. The advice would differ if it were likely that you would stay in the UK for longer than we discussed. The advice is based on you returning to France before encashment. This is because should you encash the bond whilst in the UK you would not have benefitted from Capital Gains Tax allowances you could otherwise have utilised.’

I comment on Ms C’s use of UK tax allowances below but its clear Ms C would incur penalties if she were to encash the bond prior to her return to France and Coutts was giving advice for the medium to longer term when it wasn’t clear what the tax implications of the investment would be for Ms C upon her return to France – for both estate planning and income withdrawals. This also leads me to further question why a wrapper was needed for the investments, and again I comment upon this further in my decision.

However, as I have already said, Coutts was aware of Ms C’s intentions to return to France, - ‘I would confirm that my advice is based on your returning to France’ – and it’s not clear to me why it provided such advice based on what it knew i.e. that Ms C’s circumstances were to significantly change as would her tax position without it knowing the tax implications.

Coutts has told us the bond allowed;

‘for the investments to grow tax free whilst in the UK (instead of being subject to Income Tax and Capital Gains Tax as income and gains arise) and there would be no UK tax on redemption.’

But like Ms C, I think any advice she was given needed to be suitably aligned to her known repatriation to France. If Coutts wasn’t able to provide that advice, then I think it should have made Ms C clearly aware of this and despite the limited information it gave in the suitability report about this, I don’t think it sufficiently did.

Ms C has also challenged the advice as she hadn’t taken advantage of any annual tax allowances that were available to her while in the UK such as her ISA allowance or CGT exemption. The CGT exemption couldn’t be used in conjunction with the offshore bond wrapper. There is contradictory commentary about this in the suitability letter. In one section it said;

‘At present you have not had the opportunity to utilise either your annual Capital Gains Tax or Individual Savings (ISA) allowances. However, further consideration can be given to these matters once we have completed your initial investment. [the adviser] will arrange a further meeting prior to the end of the tax year to look at this matter when we can look to utilising both the 2010/11 and 2011/12 allowances.’

Coutts hasn’t been able to confirm whether the ISA allowances were used so potentially Ms C didn’t make use of this valuable annual tax free allowance. Further on it said;

‘You consider tax efficiency as a major part of your requirements and it is for this reason that I am recommending that both the discretionary portfolio and the collective funds be held within an offshore bond wrapper.’

But this was contradicted further on in the report;

‘Before considering investment in an offshore bond, you should make use of the annual capital gains tax exemption available to you. For 2010/11 the capital gains tax exemption is £10,000 per individual, and we consider this is a valuable exemption which you should make use of each year as otherwise it will be lost. Offshore bonds are not liable to capital gains tax so you cannot make use of your exemptions via an offshore bond.

Whilst your current assets will not offer the opportunity to use your allowances going forward, the generation of income by taking regular tax deferred withdrawals, the potential benefits of potentially moving abroad, and the ability to assign segments of the Bond for inheritance tax planning overrides the use of your CGT allowances in your priorities.’

In my opinion the suitability report isn’t clear, and I think it would have confused Ms C. And looking at Ms C’s circumstances, I’m satisfied Ms C had limited investment experience so I think she would have been totally reliant on the advice given to her by Coutts. She didn’t have the investment knowledge or experience to make such an investment decision unaided. I haven’t been presented with any evidence that the advice given to invest into the offshore bond wrapper was more beneficial for Ms C over and above her taking advantage of her UK allowances first and investing onshore until she returned to France.

So, I don’t think the bond wrapper was suitable partly on the basis that Ms C hadn’t used any of her tax allowances – personal allowance, income tax and capital gains tax and ISAs etc. I don’t agree with Coutts’ statement that while the;

‘current assets will not offer the opportunity to use your allowances going forward, the generation of income by taking regular tax deferred withdrawals, the potential benefits of potentially moving abroad, and the ability to assign segments of the Bond for inheritance tax planning overrides the use of your CGT allowances in your priorities.’

To me it doesn’t make sense as ‘the potential benefits of potentially moving abroad’ hadn’t been appropriately explored or assessed. And I agree with Ms C’s comment that it is usually the right thing to do to utilise all available tax exemptions and allowances before considering alternatives. And in its somewhat unclear and contradictory suitability letter Coutts does make reference to this;

‘Before considering investment in an offshore bond, you should make use of the annual capital gains tax exemption available to you.’

But Coutts clearly didn’t act in line with its own identified course of action, which in my opinion it should have done, and which to me demonstrates a lack of Coutts acting in the best interests of its customer. The bond wrapper didn’t allow for Ms C to use her tax allowances and exemptions which she says would have allowed her to obtain her desired level of income, mostly tax free, during each year she stayed in the UK and which I don’t think was unlikely.

Ms C has questioned why Coutts didn’t just manage the investments itself – rather than within the offshore bond wrapper – until she returned to France and advise her to invest into an Assurance Vie French life insurance-based investment product. This would be designed for long term investments and which provided tax benefits and

withdrawal of some of the gains tax free after eight years. But we know that Coutts couldn't give non-UK based tax advice.

The AXA bond Ms C did have was a capital redemption bond which I understand would be similar to a Contrat de Capitalisation and could have disadvantages in estate planning compared to a French life assurance policy, which I have been told has proved to be the case.

While I accept that may be the case, in the circumstances of this complaint, I can't make a finding on what alternative advice could have been given and whether that would have been more suitable. I can only consider the investment advice that was given and whether that was right bearing in mind Ms C's circumstances and investment objectives. I explain this in the putting things right section below, but I do accept Ms C considers she has been disadvantaged because of this.

Overall, I can't see there was any need to have held Ms C's investment portfolio within the offshore bond wrapper. That just unnecessarily added additional costs on top of the investment costs, altered the tax implications and reduced the flexibility for Ms C. And the majority of the investments made were held by Coutts in its in-house portfolio, so the wrapper wasn't needed to hold those investments – the funds were already with Coutts. And, as I understand it the offshore bond wrapper had the effect of making income withdrawals less tax efficient in both the UK and France and increasing the inheritance tax liability for Ms C's family. I think investing outside of the wrapper would have made Ms C's investments more flexible and allowed her to optimise gifting etc upon her repatriation to France.

The advice given is at odds with what Ms C wanted to achieve. In Coutts' suitability report it said the advice was only suitable if Ms C was to return to France. Despite Ms C returning to France this hasn't proved to be the case and which I am of the opinion was foreseeable. And I think she could have achieved her investment objective of an annual income of £57,000 without the need for the offshore wrapper and would also have been able to use her annual tax allowances and so the majority of the income would have been tax free rather than just deferred.

Ms C has said the priority was always the tax efficiency of leaving assets upon her death. But I don't agree as this wasn't the only identified priority when the advice was given. Ms C's other objective was for income, but my understanding is this fell away as she rented in the UK before returning to France and spent only a small portion of the funds she had earmarked for a house purchase. So, Ms C says she was always able to live comfortably on what remained of that money and she hadn't taken an income from the bond – just one withdrawal before she moved back to France for tax purposes. But her plans did change – after she spent less money than she thought she would, however I think that at the time of the advice income was very important to her as she didn't have any alternative means.

Taking all the above into account, I don't think the advice given to Ms C by Coutts was suitable for her. The suitability letter was confusing, contradictory and difficult for Ms C to understand. The offshore wrapper added unnecessary costs and limited Ms C's flexibility when it was known she would be returning to France. Insufficient consideration was given to her use of UK tax allowances, and I don't find any advantages provided by the offshore bond, which was a capital redemption bond rather than offering a life assurance bond, outweighed the use of Ms C's UK tax allowances/exemptions. And I don't think it's unlikely Ms C's overall circumstances were going to change as they were in a state of flux at that stage in her life.

It follows that I uphold Ms C's complaint and Coutts' needs to put the matter right.

Putting the matter right

While this service, when putting a matter right, looks to put the customer back in the position they would have been in but for the business' advice, in this case it isn't straightforward, and I can only use an approximation.

Ms C has said she should have been advised to invest into an Assurance Vie product. I accept there were other investment options available to Ms C at the time of the advice, but it can't be known for sure this is what she would have done if she had been appropriately advised. I say this because Coutts has told us it wouldn't give non-UK based advice so I assume it wouldn't have had the knowledge or expertise to give such advice on a French product. And if Coutts had told Ms C it couldn't advise her bearing in mind her circumstances and knowing she was going to move back to France, then no doubt she would have sought alternative advice from a different adviser. But it can't be known for sure what that advice would have been.

In my opinion, the underlying investments weren't unsuitable for Ms C and her requirements. By investing onshore it would have allowed Ms C to use her tax allowances each year and given her flexibility about her future financial plans when she returned to France. But I think it is the wrapping of those investments into an offshore bond that is the main cause of the complaint. Ms C is now in a position she didn't envisage because of the advice she received from Coutts.

So, to put the matter right I think Coutts should do the following;

- I'm satisfied the offshore bond wrapper wasn't suitable for Ms C as the income withdrawals are less tax efficient and currently potentially increases her inheritance tax liability. I think this was foreseeable. So, I don't think Ms C was given suitable advice and the offshore bond should be sold. Coutts should pay the resulting tax liability and/or penalties that Ms C would otherwise not have paid if she hadn't been invested in the offshore bond wrapper rather than investing onshore.
- Ms C will need to provide the relevant evidence to Coutts of any payment she makes to HMRC for the tax and/or penalties incurred in selling the bond.
- And Coutts should repay Ms C the difference between the costs incurred in using the offshore bond wrapper compared to the costs she would have incurred if she had just invested onshore in the investments made.
- Coutts should add interest to those additional wrapper costs at a rate of 8% simple from the date(s) of investment to the date of payment.

I do accept the above isn't exact, it is only hypothetical and a broad brush approach. I also accept it doesn't account for the UK tax allowances missed out on. But equally Ms C may be otherwise financially advantaged as it can't be known what other action she would have taken, so I think it is a fair and reasonable approximation of the losses Ms C has incurred by being advised to invest into the offshore bond. The method reflects the informal nature of this service.'

I outlined the financial limits to the awards I could make – £160,000 plus interest. But it was my recommendation that if the amount of compensation was more than £160,000 then Coutts should pay Ms C the balance.

Coutts responded to provide some observations to give context to Ms C's broader client journey. It told us that in 2016/2017 it referred Ms C to a French law and tax specialist because of her intention to return to France and which led to her engagement of a dual qualified French/English tax adviser. Ms C was advised to take the 5% cumulative tax deferred withdrawals before becoming a French resident for tax purposes on 4 April 2017 and not to take any further drawings thereafter. The adviser noted the offshore wrapper didn't offer benefits from a French income tax perspective.

It accepted the referral was made several years after the original advice was given in 2010 and so doesn't form part of the advice process but thought it might be useful to consider as part of the wider relationship and support provided to Ms C. It said it may also offer insight into how Ms C came to understand the implications of the wrapper and the timing of her actions in relation to her tax residency. So, it wasn't sure why the French tax adviser didn't recommend collapsing the bond prior to her move to France given its understanding of the wrapper's limitations.

It said it found it difficult to reconcile the time of the complaint as Ms C would likely to have become aware of the wrapper's lack of French tax efficiency following her engagement with the tax adviser in 2016/2017. It felt these points might be relevant when considering the broader timeline of events and Ms C's awareness of the issues now raised.

It also said the advice had previously been reviewed in 2014 and was found to be suitable as it fell within a section 166 bank wide review undertaken by a skilled independent analyst. The methodology used was reviewed by the regulator – the Financial Conduct Authority ('FCA') – who was of the opinion the methodology was fair.

Coutts concluded by saying that it shared the above not to challenge the conclusions reached but in the spirit of ensuring all relevant aspects of Ms C's journey were considered in forming the final view.

Ms C replied. She said she had – until she reviewed whether her ISA allowance had been used – forgotten about a full review carried out by Coutts in 2015. It looks to me this likely came about as a result of the section 166 bank wide review referred to by Coutts in response to my provisional decision. It was at the time of the 2015 review Ms C was advised to make use of her ISA allowance. She couldn't recall this being recommended to her prior to that.

Ms C said a French adviser was appointed to take over Ms C's account at which time it was correctly noted she was a zero rated tax payer and it was pointed out she hadn't been using her UK tax allowance. However, as she was closer to returning to France it was advised she retain the offshore bond because of the estate planning advantages the adviser believed it would have in France.

But, and crucially, the advice given at the time included a critical error about the policy – which is that it was a capital redemption bond rather than life assurance – the latter of which would usually be the default. And any life assurance bond would have benefitted from the estate tax exemptions in France. She couldn't understand why Coutts chose capital redemption which was unsuitable for her, and it wasn't until 2020 when this was discovered by her new adviser.

Up until then, Ms C's new adviser hadn't ever seen the original suitability report and wasn't told the policy was capital redemption rather than life assurance and it was

that information which was passed to the tax adviser in 2015. If the bond had been a life assurance policy Ms C would have been able to leave the money to her family in the most tax efficient way. But that error aside it was the 2010 advice that was unsuitable even if the opportunity to put the matter right in 2015 was lost.

Ms C said the Assurance Vie products were a mainstream investment and several British insurers had already launched their own French compliant bond wrappers, including the provider of the bond wrapper she did hold – AXA. So, she said it wasn't specialist knowledge as I had implied in my provisional decision and would have been very straightforward for the adviser to have found this out in 2010.

To put the matter right Ms C said the surrender of the bond wasn't necessary and would leave her worse off. Because of her age – over 70 years – the opportunity to secure French life assurance had gone. What remained was careful tax management. If she were to surrender the bond in one go it would push her into higher tax brackets and would create a disproportionate tax burden. So, it was better for her to take annual withdrawals and keep within lower rates.

Ms C just wanted the return of all commission and fees taken in respect of the product which she says was unsuitable for her. She broke this down into two parts – the initial and renewal commission for Coutts, plus the ongoing advice fees. And the establishment (net of bonus), and administration fees and management charges of the bond itself. Plus, interest should be added on both sums.

Ms C asked that she be given the opportunity to see Coutts' arguments in response to my provisional decision. But as both parties raised points I want to respond to, I am issuing this second provisional decision to ensure both parties are clear on how I think the matter should be resolved.

What I've provisionally 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.

I recognise the FCA required Coutts to appoint a Skilled Person under section 166 of the Financial Services and Markets Act ('FSMA') to conduct a bank wide review which included the advice given to Ms C in 2010. Coutts has said the Skilled Person, who is independent from Coutts, reviewed the advice and found it to be suitable. However, I'm considering this advice independently and I'm not bound by what the Skilled Person may have decided. In my consideration of the advice I've taken into account the Principles, FCA rules and guidance plus good industry practice. And having done so, I've reached a different outcome as already outlined.

From what Ms C has told us, she didn't receive any advice to take advantage of her ISA allowance – further to the reference to it in the 2010 suitability letter – until 2015 when a full review was carried out. So, I'm satisfied that at the time of the advice, Coutts didn't follow its own advice and insufficient consideration was given to her use of UK tax allowances.

Both parties have highlighted the tax advice Ms C was given in 2016/2017. I was aware of this when I issued my previous provisional decision and deliberately didn't comment on it as it wasn't relevant to the advice that was given by Coutts in 2010. That being said, I am satisfied that there was a lack of awareness that the bond was capital redemption rather than life assurance which I think is most likely the reason Ms C wasn't given alternative advice at the time, only to take the 5% cumulative

withdrawal. And I also think this is most likely the reason Ms C didn't complain sooner, only when her more recently appointed adviser became aware of it.

However, that doesn't impact on my conclusion that Ms C was given unsuitable advice in 2010 so I remain of the opinion the complaint should be upheld.

While I accept Ms C's comments that Assurance Vie products might have been more mainstream in 2010, I remain of the view that it would be difficult to know with any confidence what alternative investment advice could have been given at the time. However, I note that my previous opinion about putting the matter right – the surrender of the bond – would leave Ms C in a worse financial position. I have sympathy for this and so have considered the alternative.

Ms C has said retaining the investment and managing the tax with annual withdrawals would suit her better and I think that is reasonable under the circumstances. But I don't agree with Ms C in that she has asked for all the charges/fees etc to be repaid to her.

I say this because, as concluded in my original provisional decision, it was only the advice to wrap the investments in the offshore wrapper that I didn't agree with. I thought the underlying investments weren't unsuitable – it was only the wrapper itself I didn't think was right for Ms C as it added unnecessary costs and difficulties – and so was the main cause for complaint.

Ms C wants the initial and renewal commission she has paid to Coutts to be repaid to her, plus the ongoing advice fees. She also wants the establishment (net of bonus), and administration fees and management charges of the AXA bond itself repaid. Ms C wants interest on both sums.

I think this is the right outcome with the exception that I think it is only the fees, renewal commissions, ongoing advice fees, administration fee and management charges etc that relate to the offshore wrapper that should be repaid to Ms C. I don't think any fees that would have applied to any advice charged for the underlying investments should be repaid to her. I say this because Coutts did provide a service and the advice given in the provision of that service, about the underlying investments, I don't find to be unsuitable. It is the advice to invest within the offshore wrapper that I think was unsuitable and needs to be put right.

Putting the matter right

Ms C has told us that to surrender the bond now would put her in a worse financial position and I accept that argument. But it remains that Coutts should repay to Ms C any costs incurred in holding the underlying investments in an offshore wrapper rather than onshore.

To put the matter right Coutts should;

- Repay Ms C the difference between the costs incurred in using the offshore bond wrapper compared to the costs she would have incurred if she had just invested onshore in the investments made.
- Those fees and costs should include any of its own initial commission and renewal commission as well as the ongoing adviser fees. These are limited to the costs for the offshore wrapper element only.
- Ms C was made aware in 2015 that Coutts were no longer taking its ongoing

fees from the product, but from her bank account and were increased from 0.5% to 0.8% per annum. But Coutts' advice fee remained linked to the value of the AXA offshore bond so these should be included in the calculation.

- Coutts should repay the establishment fee (net of bonus) for the AXA bond as well as administration fees and management charges, again limited to those attributable to the offshore wrapper.
- Coutts should add interest to those additional wrapper costs at a rate of 8% simple from the date(s) of payment by Ms C to the date of settlement.

...'

In response Ms C made a final submission about putting the matter right;

- In light of my updated suggestion for redress Ms C reiterated she had lost out on UK tax allowances over the years she remained in the UK which likely cost her over £60,000 and the loss of French estate and IHT tax advantages, particularly bearing in mind Coutts' second error in assuming the bond was life assurance could even amount to tens if not hundreds of thousands Euros.
- But as it was impossible to quantify the losses accurately, plus this service's compensation cap Ms C had relinquished hope of redress of the detrimental tax consequences, and her only hope was for the return of the fees and costs.
- As such Ms C wanted redress for the commission Coutts earned from selling the bond, its renewal commissions, the post-2015 adviser fees which remained linked to the bond value and the advice to keep it further to its mistaken belief it was life assurance rather than capital redemption. She also wanted the ongoing fees from the product that were taken from her bank account which increased from 0.5% to 0.8% and Coutts' advice fee linked to the value of the offshore wrapper. She also wanted the product charges taken by AXA – the establishment and administration fees plus its own product management fees.
- Further to my second provisional decision Ms C was concerned by my suggestion Coutts should repay the difference between the costs incurred in using the offshore bond wrapper rather than investing onshore. This allowed Coutts scope to reduce compensation by inventing hypothetical onshore custody or service fees e.g. claiming it would have applied a 1% annual custody fee that would cancel out much of the bond's excess cost.
- I had said that it couldn't be determined what Ms C had invested in which she agreed with but wanted the same principal applied to the redress. It wouldn't be fair for Coutts to retrospectively construct an onshore fee model to offset its liability. Even if such onshore fees might have applied, had Ms C's investments been structured onshore, those additional costs would have been more than offset by the substantial tax advantages she would have enjoyed using her UK tax allowances.
- Ms C wanted me to clearly outline compensation methodology for Coutts to follow.

Coutts also replied with more information. It said;

- It had concluded Ms C was a higher rate tax payer at the time of the advice because she held £4m plus of assets that would be producing an income.
- The suitability letter confirmed Ms C's medium term intention to return to France, and she intended on staying in the UK for the immediate future. The Wealth Enhancement Medium-Term investments aligned with her time horizon and anticipated relocation. The suitability letter made clear the advice was based on her

plan to repatriate and would differ if she were to stay longer.

- Ms C could have used her ISA, CGT or income tax allowances with investments held outside of the bond wrapper.

In January 2015 Ms C confirmed she hadn't used her ISA or CGT allowances and the suitability letter confirmed there would be a further meeting to discuss this. It said the meeting took place on 26 May 2016 and Ms C confirmed she was going to fund her ISA that year through NSI.

It said that while it provides general information about tax allowances like ISA and CGT exemptions the onus was on the client to make use of those allowances. The tax consequences of any advice it gives is the client's responsibility.

- It said there was no cost difference between the offshore and onshore holdings. The client holds the same assets and the offshore wrapper is free of CGT.
- It accepted my comments that the suitability letter was contradictory and confusing but reiterated the tax consequences are the client's responsibility and the suitability letter confirmed Ms C should take tax advice.
- It couldn't reasonably be expected for a financial planner to understand the French tax implications of an investment, there was no immediate plan for Ms C to return to France and tax law changes all the time. Ms C was responsible for her own tax costs. It was unclear what loss had been incurred and what steps Ms C took to mitigate those tax costs when she received French tax advice. If there is a French tax issue Ms C's adviser should have picked this up. The advice was suitable and Ms C would have benefitted from the product while resident in the UK and thereafter.
- The bond was set up as a capital redemption bond as Ms C intended on withdrawing a monthly income as outlined in the suitability letter. It wasn't set up for IHT or estate planning purposes and Ms C appeared to have changed her objective than the one when advice was given.

Ms C met with a solicitor specialising in French law in 2017 when she relocated to France who would have needed to have reviewed her assets including the offshore bond. It referred to an email I had quoted evidencing this.

I had concluded that Ms C had no intention of drawing income in 2017 and so Ms C wouldn't have recognised the advice as being unsuitable but this was clear in the suitability letter. If Ms C is saying she had no intention to draw income this contradicted the advice given in 2010 and this along with awareness of the matter in 2017 would mean the complaint was time barred under the rules.

- It sought clarity on Ms C's loss and said there was no cost difference between onshore and offshore holdings. The 0.5% - 0.8% I had referenced related to the underlying investment and not as a result of being in the wrapper.

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 remain of the opinion that the advice was unsuitable for Ms C and should be upheld. I'll explain why.

In Coutts' response it mostly reiterated comments it had previously made or that I had already addressed in my provisional decisions, but I will comment on the points raised that I consider to be appropriate in my consideration of the complaint.

Coutts has said it concluded Ms C was a higher rate tax payer because of the £4m plus of assets she had recently received, and which would be producing income. I acknowledge this point and did consider it when reviewing the case file. But it is known that Ms C wasn't employed at the time of the advice and wasn't seeking employment. And if Coutts' argument is that Ms C was a higher rate tax payer because of her assets then its reference in its suitability letter that there would be the opportunity to encash when she was subject to lower tax rates, and that she could defer the creation of a tax liability until the time she anticipated being taxed more favourably, just wouldn't apply.

And there was equally the possibility that Ms C could have invested in such a way that some, if not all, income received from the assets would have remained outside of the tax net or subject to lower rate tax if Ms C had been advised to have taken advantage of all the UK tax allowances that were available to her but weren't used. So, I don't agree with Coutts.

Coutts has also said that it didn't give tax advice and that it was Ms C's responsibility to take such advice or make a decision to invest for tax benefits – like investing into an ISA – which it failed to do despite its own commentary this should be done. While I am satisfied I have addressed this point previously, I should reiterate I don't agree with Coutts' comments. The suitability letter makes clear reference to the tax advantages or otherwise of the offshore bond and that a further meeting was to be held to review the CGT and ISA allowances for 2010/11 and 2011/12. But this didn't happen.

Coutts had already told us it didn't provide 'holistic' tax advice. It said that while it would consider the client's tax objectives when giving advice it wouldn't take into account the 'broader client circumstances (for example, we would not discuss tax relating to any employment or business income streams and is always limited to the tax treatment in the UK.' But to my mind advice, about taking advantage of an ISA or CGT allowances etc, is a fundamental consideration when giving investment advice.

I have already addressed Coutts' comments that its financial adviser couldn't know the tax implications in France and that laws change all the time. It said the advice was suitable and Ms C would have benefited from that while she was in the UK and thereafter. But I don't agree. Coutts knew of Ms C's intention to return to France so if it wasn't able to provide suitable advice, including the implications for tax, it should have advised her to seek advice elsewhere. The advice given to Ms C was financially detrimental to her and I think the possibility of that was foreseeable to Coutts, whatever its knowledge of the French tax system.

Coutts commented that as I had concluded Ms C had no intention of drawing income in 2017 she would have recognised the advice as being unsuitable but this was clear in the suitability letter. If Ms C is saying she had no intention to draw income this contradicted the advice given in 2010 and this along with awareness of the matter in 2017 would mean the complaint was time barred under the rules.

As previously referred to I was aware Ms C received advice in 2017 from a tax adviser. But the advice the tax adviser was able to give was based on incorrect information i.e. that the investments were held in a bond was capital redemption rather than life insurance. I think is most likely the reason Ms C wasn't given alternative advice at the time, only to take the 5% cumulative withdrawal. The awareness of the correct status of the policy was only discovered by her recently appointed adviser, so any advice given in 2017 wasn't based on the correct facts. So, this along with the fact that Ms C didn't intend on taking income in 2017 wasn't sufficient to raise awareness of the potential cause for complaint under the time limits that apply was most likely the reason Ms C didn't complain sooner, only when her more recently appointed adviser became aware of it.

Coutts said the investment wasn't set up for IHT/estate planning purposes and the priority was for income and Ms C has changed her objective. I addressed this in my provisional decision and accepted that Ms C's identified need at the time was for income but this fell away. However, the suitability report did also explain the benefits of the offshore bond in that segments could be assigned to Ms C's children and grandchildren for Ms C's inheritance tax planning.

I accept Ms C's comments about the losses suffered and that calculating the actual amount would prove impossible. And I also accept Ms C's nervousness about how the matter should be put right, particularly as Coutts, in response to my provisional decision said there was no difference in costs between holding the assets in the offshore wrapper and just holding them outside of the wrapper. So, I have detailed below how the matter should be put right.

It's also not my role to put myself in the shoes of the adviser. It's possible that Ms C would have taken out an Assurance Vie product, but I think it's equally likely that suitable advice would have resulted in an alternative course of action. My aim, in deciding fair compensation, is to put Ms C as close as possible to the position she'd be in but for the unsuitable advice. Here, I appreciate that there are a wide range of options but I'm satisfied that what I set out below is fair and reasonable in all the circumstances

Putting things right

Coutts should repay to Ms C any costs incurred in holding the underlying investments in an offshore wrapper rather than holding those same investments outside of an offshore wrapper. This should exclude any investment management or fund level fees which Coutts would have paid as part of its usual discretionary management portfolio service of the underlying funds held as I am satisfied those investments were suitable.

The redress should include;

- Any upfront adviser fees paid which would have been less if the same investments had been held outside the offshore wrapper in a general investment account platform i.e. if she had just had the same investments held within the offshore bond in the UK, without any kind of bond wrapper.
- All fees, costs and commissions linked directly to the offshore bond itself which would include the AXA's establishment, administration and management fees. So, Coutts should repay the establishment fee (net of bonus) for the AXA bond as well as any associated administration fees and management charges.
- Plus Coutts' should repay initial and renewal commissions and any post-2015 adviser fees linked to the bond.
- Coutts' shouldn't include any additional hypothetical onshore fees because any tax benefits resulting from that – if that had been the case – have already been lost.
- Coutts should add interest to those additional wrapper costs at a rate of 8% simple from the date(s) of payment by Ms C to the date of settlement.

Before making any payment to Ms C;

- the amount should be agreed with her and
- Coutts should provide a breakdown of its calculations for the offshore bond compared to the investments being otherwise held.
- If requested Coutts should provide an actual (redacted) sample of costs incurred by a similar account with similar investments to evidence the costs of investments held outside of the offshore wrapper.

- And Coutts should also provide evidence that the ongoing fees of 0.5% - 0.8% referenced in my second provisional decision related to the underlying investment and not as a result of them being in the offshore wrapper.

Where I uphold a complaint, I can award fair compensation to be paid by a financial business of up to – in this case – £160,000, plus any interest and/or costs/ interest on costs that I think are appropriate. If I think that fair compensation is more than £160,000, I may recommend that the business pays the balance.

As I uphold the complaint. I think that fair compensation should be calculated as outlined above. My decision is that Coutts should pay Ms C the amount produced by that calculation – up to a maximum of £160,000 plus interest.

My recommendation is that if the amount produced by the calculation of fair compensation is more than £160,000, I recommend that Coutts pays Ms C the balance.

My final decision

For the reasons given, I uphold Ms C's complaint about Coutts & Company, and it should put the matter right as laid out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 7 January 2026.

Catherine Langley
Ombudsman