

complaint

This complaint concerns the offshore bond recommended to Mr and Mrs L by Wilfred T. Fry (Personal Financial Planning) Limited (“the business”). They say they were told this would be accepted by the French authorities as an “assurance vie”, but were later told by the product provider that it would not. They cancelled the bond and wish to be compensated for the loss they have incurred.

background

Mr and Mrs L received advice from the business in 2005. At this time, they were living abroad and it was noted they were planning on moving to France. They wanted advice on tax planning and the business recommended an offshore bond, which commenced in 2006. The business noted that the product should meet the criteria to be treated as an assurance vie by the French authorities.

In 2011, Mr and Mrs L were finalising their plans to move to France and made enquiries about the bond. They say the business told them it may not qualify as an assurance vie, which prompted them to contact the provider. The provider said that it would not qualify and so they cancelled the bond. They subsequently took out an assurance vie through another business.

Mr and Mrs L maintain that this has caused them a financial loss. Although the bond made a profit, they said this was because they chose the funds and so it would have made a profit regardless of the investment wrapper. Mr and Mrs L provided hypothetical calculations, which they say show they have suffered a financial loss.

Our adjudicator confirmed her opinion that the complaint should not succeed. She noted that the provider had said the bond did not qualify as an assurance vie, but the provider said this was because it did not have a permanent place of business in France. Therefore, the adjudicator had not seen evidence the French authorities would not class the bond as an assurance vie.

The adjudicator also commented that there was insufficient evidence to show a loss had been suffered as a result of Mr and Mrs L taking out the bond. Although Mr and Mrs L had suggested how a loss had occurred, the adjudicator believed the factors used were too hypothetical.

Mr and Mrs L did not agree with this outcome. In summary, they said:

- The evidence is irrefutable that they were sold the bond as an assurance vie.
- It was the funds within the bond, chosen by them, which made the profit, not the bond.
- The funds would therefore have made a profit in any insurance wrapper arrangement.
- In 2011, the business’ representative said that the bond might not qualify as an assurance vie so they should start redeeming investments. As they could not receive an answer from the business, they approached the provider, who said it was not an assurance vie. They therefore cancelled the bond.
- They provided a response from the French authorities which said that it did not want to become involved with the matter.

- They maintain that they have suffered a financial loss and have provided loss calculations to show this.

In summary, the business said:

- Its suitability letter to Mr and Mrs L showed that they were informed the bond “should” be treated as an assurance vie, not that it “would”.
- Mr and Mrs L have not provided evidence to show that they have suffered an actual financial loss.

As this complaint remains unresolved, it has been referred to me for review.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I firstly note that the complaint does not concern the actual suitability of the bond – in terms of the funds selected and the amount of investment. The complaint concerns how the bond was represented to them. Mr and Mrs L maintain they were told this would definitely be classed as an assurance vie, which is what they required in readiness for their move to France.

An assurance vie contract offers certain benefits to investors resident in France which are not available with other types of investments. I understand it offers preferential tax treatment of the growth and income enjoyed by the investment, particularly if held for over eight years. There are also benefits in relation to succession tax (the French version of inheritance tax). Therefore, I accept there are potentially significant advantages with such an investment for an individual who is, or is going to be, resident in France.

I have considered how the bond was described to Mr and Mrs L at the outset. Whilst I appreciate it was not definitively described as an assurance vie by the business’ representative, I consider it was effectively recommended on the basis it would be treated as if it was. Overall, I find this too subtle a difference to have been appreciated by Mr and Mrs L, and find it likely they understood they were taking out an assurance vie.

However, it is not clear to me that the business’ suggestion that the bond would be treated as an assurance vie was incorrect. The provider has admitted that the issue about it not being based in France was incorrect. The French authorities have also said that they do not wish to become involved with this matter. I can appreciate that the bond was sold on the basis that it “should” qualify, but there is insufficient evidence to safely conclude that the French authorities would not have accepted the bond, had an application been made before it was surrendered.

Nevertheless, I also consider it is plausible that had they appreciated the offshore was not definitely an assurance vie, Mr and Mrs L would likely have opted instead for an investment contract that would undoubtedly be regarded as such by the French authorities.

However, whilst this may be the case, in order to determine whether any compensation is due it is necessary to establish a financial loss has occurred. I note Mr and Mrs L have referred to the disadvantages of not investing in an assurance vie. These include increased

taxes, reduced income and erosion of capital. I can understand this point, but the fact there may be such consequences do not mean they have actually affected Mr and Mrs L.

Further, although Mr and Mrs L have referred to actions they may have taken in 2011 and 2012, such as put the money they received from the sale of a property into the investment, I am unable to base a compensation assessment on such hypothetical assumptions.

I also appreciate Mr and Mrs L say the capital they have invested in the assurance vie is tied up for eight years (in order to receive the optimum tax benefits). However, it seems Mr and Mrs L have other capital available to them, and I am not persuaded they have been unduly disadvantaged in this way.

Again, whilst Mr and Mrs L have referred to the advantages of an assurance vie for French succession taxes, it cannot be known how these will affect them until they die. I am not persuaded it is possible to make a definitive assessment at this point.

Mr and Mrs L note that their claim for compensation includes variables and imponderables going forward. I consider this is the key issue. In order to be in a position to award compensation, I must be satisfied an actual financial loss has taken place, or that it is very likely one will occur in the future.

In this case, Mr and Mrs L have not provided evidence the offshore bond has caused them a loss at the point where it was surrendered – for instance, compared with the position assuming it had been an assurance vie. They have also not provided substantive evidence they will suffer a loss in the future.

Although I can appreciate Mr and Mrs L remain of the opinion that the business sold them a product that was not suitable for their requirements, and mis-led them into believing it was an assurance vie, I have not seen sufficient evidence they have suffered a loss. Therefore, and acknowledging this is likely to come as a disappointment, I am unable to uphold their complaint.

my final decision

I do not uphold this complaint and I make no award.

Doug Mansell
ombudsman