

## complaint

Mrs H complains about advice she was given by Towry Limited in 2010.

She says that:

- She was introduced to Towry and Towry just assumed it was instructed. She was not given a choice of financial advisers.
- She feels the money was just taken from her and matters were not explained to her in clear language, or at all.
- The costs of the service were not clear.
- She was not put in touch with an accountant for her tax affairs to be dealt with.
- No advice regarding the protection of her capital sum from inheritance tax planning was communicated to her and if she remained with Towry and died during the seven year period after the gifts were made, her estate would have had to pay an enormous amount of inheritance tax.

## background

Our adjudicator issued an assessment in 2013 in which he set out his opinion why he did not believe the complaint should be upheld. Briefly, the adjudicator stated:

- Mrs H had a choice of advisers from a 'panel' and did not believe she had been forced or coerced into using Towry.
- If Mrs H had been uncomfortable with the involvement of Towry, or with the advice she received, then she was free to seek advice elsewhere and terminate her relationship with Towry.
- He was satisfied the language used in the 'suitability letter' was clear and the recommended course of action was described in a straightforward manner.
- He was satisfied the 'Liquidity Fund' provided the desired safety and accessibility that Mrs H wanted.
- He was of the belief that the 'suitability letter' detailed the costs of the advice.
- A firm of solicitors was present at the meetings and it was noted that the solicitors would deal with matters to ensure her assets were protected to some degree from IHT. A separate business would deal with tax affairs.

Mrs H replied and submitted that:

- She was only introduced to Towry and, *"her vulnerability, desire for privacy and ignorance of financial and investment matters were exploited by Towry"*.
- She did not seek out a different financial adviser as she did not want her affairs to become public.
- She believed that she was recommended to put the money in a bank account as her instructions to the adviser were that she did not want to take any risks.
- She did not have direct access to the JP Morgan account and this is borne out by the fact that the money was not in her name.
- A comparison should be made as to the actual amount she would have obtained had her money been placed in another bank or more appropriately compared with the Bank of England rates of return in accordance with her attitude to risk.
- She was not given any information about charges or how the investment was performing when it was in place.

- She did not understand that Towry's fees would be £740 plus vat per hour.

The adjudicator was not inclined to alter his opinion and informed both parties that the matter would be referred to an ombudsman for consideration. In doing so, he invited any further comments from both parties. In his letter to Mrs H he stated:

- He could not hold Towry liable for any wrongdoing simply because it was the only IFA Mrs H was introduced to.
- Her desire for privacy did not mean that she had to retain the service of a business that she may have been unhappy with.
- He was satisfied the Liquidity Fund was suitable for her.
- The account was in Mrs H's name and she had access. He understood Mrs H had signed to open and close it.
- The fees were not £740 plus VAT per hour. Towry confirmed that this was not the hourly fee, but the total fee for the advice to invest in the Liquidity Fund and national savings.

Towry responded stating;

- It did not see why Mrs H's particular circumstances would have prevented her from seeking out an alternative adviser had she been dissatisfied with the service provided. It also did not describe the Liquidity Fund as *"similar to the bank account at HSBC..."*.
- £740 plus VAT was not the hourly fee rate but was the total fee paid by Mrs H for the advice provided in relation to her investment in National Savings products and the Liquidity Fund. This fact was communicated to Mrs H in the recommendation letter.

Finally, Mrs H said:

- She and her family were introduced to one financial adviser.
- Towry's dealings with her were too swift; so that she did not understand what she had been advised to sign. For example she thought that the money transferred to the Liquidity Fund was going to a bank account in her name, as did all her children.
- Her attitude to risk is 'No Risk'. She did provide an authority to Towry for the money to be transferred back to HSBC Bank. However, it was disputed that the account was in her name.

The case has now been passed 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.

As to Towry becoming Mrs H's financial adviser, as I understand it there was a panel of advisers' from which Mrs H could choose. It has been submitted that Mrs H did not have this option and Towry was simply presented to her. I can understand that Mrs H would be concerned with that but it is not an issue for Towry. It is a regulated independent financial adviser and it is entitled to provide advice to its client. It seems to me that Towry was asked to meet with Mrs H with a view to giving her financial advice and that is what it did. It is not its role to then provide a range of other financial advisers. Be that as it may, the material issue is what advice it did then provide and how it dealt with its client.

As the adjudicator said, there was no requirement that Mrs H remain with Towry and she could have terminated its services at any time. I have not seen evidence that Towry said otherwise to Mrs H. I understand that Mrs H may have been concerned about her privacy. I can see no particular reason why a change of adviser would necessarily have affected her privacy but can understand her concern. However, I cannot hold Towry liable for that concern and cannot see, in any event, if the advice was suitable, how that has disadvantaged her. Although this does not affect my decision I have not seen supporting evidence that Mrs H was not happy to accept Towry's advice.

As discussed, Mrs H was advised to place a significant amount of her capital in the 'Liquidity Fund' as well as a National Saving product (this was a for a much smaller amount). This recommendation was made on the basis of diversifying her money which was, before then, mainly held at one bank. That seems sensible given the amount of money held at one bank. This was explained in the adviser's letters at the time and was a fairly straightforward piece of advice. The transfer to the Liquidity Fund was later confirmed. I do not believe the adviser was unclear about what was happening and why; so could not uphold the complaint on that basis.

Considering the Liquidity Fund itself; bearing in mind its holdings, its aims, the period for 'investment' and the size of the investment, I do not see why it did not meet Mrs H's requirements for (in any normal circumstances) a capital secure place to hold her money whilst longer term plans were made. It should be borne in mind that any investment has some risk; a bank can fail and even a government can fail to fulfil its obligations if circumstances are serious enough. In this case I believe the fund and the advice was suitable for Mrs H; it provided the security she required and I have not seen evidence she did not have full access to it when she needed it, and control of it. The money was withdrawn, on her request, when she required it. The valuation statements (of which there are several) are in her name.

It is worth noting that Mrs H received more than she invested (allowing for withdrawals) when she withdrew the money after less than 2 years. So it did, in actuality, supply the capital security she required.

As the advice was suitable it is not then appropriate to compare the returns she could have achieved had she invested elsewhere. There could have been a variety of ways in which her money could have been used which may have yielded more or less of a return. But the situation should not be viewed with hindsight and the fact she may have achieved a higher rate from another source does not render the advice suspect or inappropriate.

With respect to the fees Towry charged, I should firstly confirm that it is not my role to determine what level of fees a business should charge for its services. Having said that, I can consider if they have been clearly explained. Firstly I can see that the adviser clearly set out what the fee would be for the advice in relation to the Liquidity Fund and the National Savings products. I can also see that he provided a 'fee agreement', which Mrs H signed, that set out what the hourly rate would be for certain employees at the business. Total fees seem to have been paid at the time they were requested without complaint (although that does not mean Mrs H was necessarily happy with them). Be that as it may, the fees and costs were disclosed so I cannot come to the conclusion that these were hidden from Mrs H.

It has been submitted that Towry did not do enough in respect of inheritance tax mitigation. There does appear to be some contradiction here because on the one hand it is put forward

that matters were actioned with too much haste and then that material actions such as those necessary for inheritance tax mitigation were taken too slowly. Be that as it may it seems to me that inheritance tax was to be addressed in conjunction with Mrs H's (then) solicitors and Towry. That would not be unusual when dealing with large sums of money because with very large sums of money inheritance tax planning would often necessitate fairly complex legal work.

Towry did make some straightforward suggestions and recommendations at the time. The evidence would suggest that Mrs H did wish to make some gifts to her children, not necessarily because of any tax considerations but because she wanted to pass them some money. That did present the coincidental opportunity to mitigate some inheritance tax as gifting the money would make it potentially exempt (after some years) from that tax. So that is what Towry recommended.

That seems to me quite in keeping with the situation at the time; providing advice taking into account that Mrs H was probably still in some respects deciding exactly what to do with all her money but taking the opportunity to potentially mitigate inheritance tax whilst carrying out her wider wishes (to start to pass money to her children).

I have noted that there is indication that in early 2011 Mrs H (understandably) wished to pause before making any other gifts and I think this is indicative that she did not wish to make any other significant decisions regarding inheritance tax at the time.

So, I believe Towry trod a reasonable 'middle ground' at the time, taking the opportunity to make some suggestions about inheritance tax when the opportunity arose but not acting with undue speed.

As to accountancy services it is not my view that Towry were to provide such; they were to provide regulated financial advice. I do not believe it was incumbent on Towry to suggest an accountant; Mrs H could have sought out services of that nature at any time.

I understand that Mrs H had received a large sum of money and the whole situation of deciding what to do with that and meeting with financial advisers, solicitors and other professionals must have been something she was not used to and probably quite stressful. However, it seems to me that she did need financial advice and relatively quickly. The advice Towry gave did not put Mrs H's money at risk and it seems to me that the actions taken did not proceed too quickly and seemed paced to the consideration of how to distribute the money to children before any longer term plans were put into effect. What Towry was recommending was set out clearly as were its fees.

### **my final decision**

For the reasons I have discussed I do not uphold this complaint or make any award.

David Bird  
**ombudsman**