

complaint

This complaint concerns advice given to the late Mr P by Hambro Life Assurance plc (now Zurich Assurance Ltd) in 1984 to invest in bonds placed in trust. The trustees say this was to take advantage of the “dead settlor loophole”. But Mr P should have been advised when this was closed in 1998. Because he was not, this has resulted in the trustees becoming liable to a tax charge.

background

One of our adjudicators reviewed the complaint, but didn't think it should be upheld. In summary, he was satisfied the bonds were suitable for Mr P's circumstances in 1984. But he hadn't seen evidence they were set up to take advantage of the loophole, as the trustees had suggested. The adjudicator also didn't think there was any obligation for the adviser to contact Mr P when the legislation changed in 1998.

The trustees didn't agree with the adjudicator's view, and provided a barrister's opinion which supported their case. In summary, the further points made were:

- Zurich suggested the use of a trust arrangement was for speed of payment on Mr P's death. But there's no evidence to support this.
- Common sense suggests Mr P's objectives would have concerned tax liabilities and return on investment.
- There's no evidence the dead settlor loophole was mentioned when the advice was given. But the trustees recall Mr P was quite aware of the need to retain the bond for one year after his death to take advantage of the loophole.
- Also, a failure to advise in the context of an ongoing relationship is as much a breach of a duty of care as giving wrong advice.
- This is supported by letters the adviser issued in April 1986 and April 1998. It's also not in dispute that the adviser was regularly in contact with Mr P.
- If Mr P had been made aware of the change to the legislation, it's highly likely he would have made changes to his investments. These would have exposed Mr P to only a modest tax liability.

The adjudicator considered the further points made, but was not persuaded to alter his opinion. As the matter remains unresolved, it has been passed to me for review.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

As has been explained previously, as the advice was given before the implementation of the Financial Services Act 1986, there was no requirement at the time for the adviser to record the reasons for his advice.

I think it is reasonable to assume it's likely one of the motives behind putting the investments in trust was for the tax benefits this allowed. But there's no definite evidence this was specifically to take advantage of the dead settlor loophole.

I've noted the points made about what the trustees recall being told by the late Mr P. But while I've taken these into account, I am unable to uphold the complaint based solely on such recollections.

There were other tax advantages to using a trust which may also have made it attractive. All growth would be outside Mr P's estate. Also, as Zurich has explained, the proceeds would not need to await probate to be completed before being distributed to the beneficiaries.

In a letter issued to Mr P by Hambro Life in February 1984, it refers to the family trust being an important part of his CTT (capital transfer tax) planning. CTT later became inheritance tax. This letter was not issued by the adviser. Instead, it seems to be a normal letter issued by the head office when a customer establishes an investment within a family trust.

But the letter also said that Mr P should review it from time to time. There's nothing in this letter which says the adviser will continue to review the investments or the trust arrangement. I've also seen no other evidence there was any contractual obligation for the adviser to do so.

I've noted the comments about the letter the adviser issued in April 1986. But this seems to have been in response to a query made by Mr P. It's apparent Mr P had received a letter from the Capital Taxes Office asking for sight of the trust document, and had asked the adviser about it.

The adviser also refers to a letter issued by his head office about recent changes in the Budget which may affect the family trust. The adviser comments that he doesn't think these affect Mr P, but will keep him in touch with developments. I've noted the points made about this, but I think the comment was meant specifically in relation to the Budget changes referred to. I don't think it can be taken as an open-ended commitment to contact Mr P whenever any future changes are made.

The adviser also wrote to Mr P in March 1995. But this again seems to be to provide information following a query by Mr P. It related to the tax treatment of the bonds based on Zurich's understanding of the position at the time.

In April 1998 the adviser wrote to Mr P in relation to his late brother, who had died several years earlier. It's not clear how this came about. But the letter was concerned with the tax implications of investments under trusts. It does refer to changes having been made in the recent Budget. But it does not follow the adviser should have gone on to consider if there were any implications for Mr P from this.

To summarise, I've not seen evidence there was any obligation on the adviser to pro-actively review Mr P's investments. In the three examples above, it seems any advice provided was instigated by enquiries by Mr P. In the circumstances, I am unable to agree there was any failure of a duty of care by Zurich.

my final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask the trustees to accept or reject my decision before 8 February 2016.

Doug Mansell
ombudsman