

complaint

Mr T and Mr D are acting in their capacity as executors of the estate of the late Mr and Mrs J. Mr T has been the main correspondent. They're complaining about Bank of Scotland Plc (trading as Halifax) because an error was made in setting up trust arrangements for Mr and Mrs J's investments. Because of these errors, they say there was more inheritance tax (IHT) to pay on the estates than there should have been.

background

Following discussions with an adviser in 2004, the late Mr and Mrs J each put money into an investment bond that they solely owned. But the bonds were set up to cover both of their lives, meaning the proceeds would pay out on the second of their deaths. The adviser also recommended the bonds were put in trust.

Unfortunately, the trust wasn't set up correctly and Halifax accepts it was at fault for that. But it says more recent changes to IHT rules mean this error hasn't led to Mr and Mrs J's estates paying more tax than would have been due if the trusts had worked as intended. In light of the errors it made, Halifax offered to pay the legal costs Mr T and Mr D incurred in pursuing their complaint and to pay them £500 for their trouble and upset.

I previously issued my provisional decision explaining why I didn't think this complaint should be upheld. An extract is attached and forms part of this decision.

Mr T disagreed, saying he's received advice that the failure of the trust led to an additional IHT liability that wouldn't have otherwise occurred. If the trust wasn't designed to take the investment proceeds out of Mr and Mrs J's estates, this suggests the advice to use it in the first place was incorrect as it didn't meet their objectives.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having reconsidered the case, including Mr T's response to my provisional decision, my conclusions haven't changed. I'm not upholding this complaint.

It's not necessarily straightforward to reduce the amount of IHT payable on somebody's death. To effectively remove assets from an estate, so they won't be taken into account for IHT purposes at all, normally involves giving up some access to or control of those assets. Understandably, many people don't want to do that during their lifetime. When considering IHT planning, people have to make choices (and potentially compromises) based on the relative importance of these competing objectives - reducing their potential IHT liability and retaining control of their money and access to it. And when advising somebody on their IHT planning, it's clearly important an adviser understands the consumer's preferences.

Based on the IHT rules at time, and while it didn't take the money outside of their estates, the trust arrangement proposed by the adviser had genuine potential to reduce Mr and Mrs J's liability.

This is explained in some detail in the adviser's report. But to summarise, before more recent changes, spouses weren't allowed to use each other's nil-rate allowance. Transfers between spouses were free of IHT. But without careful planning, tax could become payable

on the entire value of the estate (including assets transferred on the death of the first spouse) after the second death. In this scenario, only one nil-rate allowance would be used.

The arrangement proposed by the adviser was effectively a way of ensuring both nil-rate allowances were used. On first death, the deceased's nil-rate allowance would be used to calculate whether IHT needed to be paid on the proceeds of that person's bond. Control of the bond would then pass to the survivor and wouldn't form part of their estate on their death (as it had already been accounted for). The survivor's own bond would still form part of their own estate and would be taken into account for calculating any IHT liability on their death.

The government rule change allowing a surviving spouse to effectively inherit the nil-rate allowance of their deceased partner had much the same effect as what the trust arrangement the adviser proposed was designed to achieve. That's why I'm saying the fact it wasn't set up correctly hasn't led to an additional IHT liability.

The proposed arrangement offered the potential for reducing any IHT payable, based on the rules at that time. But I can see there were other options that could have been more effective (in terms of reducing the IHT liability) and may have been able to remove some or all of the money from Mr and Mrs J's estates altogether. But to do that Mr and Mrs J would almost certainly have had to give up a degree of control during their lifetimes.

The adviser's report is intended as a record of what was discussed and this indicates Mr and Mrs J wanted to keep control of their money. Taking account of what we know about their circumstances and requirements, I'm satisfied the advice was broadly suitable as it offered a reasonable compromise between the competing objectives of reducing their potential IHT liability while also allowing them to retain control of their money.

I've taken account of the advice Mr T has received, but it is based on the assumption the trust was designed to remove the proceeds of the investment from the estate altogether. As I've explained above, that wasn't the case and I don't think the evidence shows an arrangement designed to do that would have been appropriate for Mr and Mrs J given their apparent requirement to retain control of their money.

There's no dispute Halifax made errors in dealing with Mr and Mrs J's affairs. But for the reasons I've explained, I think its offer to pay Mr T and Mr D's legal costs plus a further £500 for their trouble and upset is fair.

my final decision

My final decision is that I don't uphold this complaint. If they haven't already received the amount it offered previously and they now wish to accept it, Mr T and Mr D should contact Halifax directly.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T and Mr D to accept or reject my decision before 12 February 2016.

Jim Biles
ombudsman

extract from provisional decision:

my findings

Before going any further, I think it's relevant to explain the ombudsman service is not the industry regulator. That means we don't set the rules for businesses or police the industry to make sure those rules are followed. And we don't fine or punish business when they act inappropriately. My role is instead to consider individual disputes and award appropriate compensation where I believe a business has acted inappropriately. The main aim of any award I make is to restore the financial position that would have existed if the business had acted as it should have.

I can see from the evidence provided that IHT was paid on Mr and Mrs J's estates and that the bonds were a factor in this. But Mr T's argument that some or all of this tax should be reimbursed seems to be based on the assumption the trusts were intended to remove this money from the estates and thereby avoid inheritance tax altogether. But I don't think that was the case. In his financial report from the time of sale, the adviser described the purpose of the proposed trusts as follows:

You each effect a Personal Investment Plan on a last survivor basis to ensure that it continues after death of the first spouse. Each of you will be regarded as owning a plan for Inheritance Tax purposes.

A flexible trust is established to hold the Personal Investment Plans for beneficiaries of your choice but both of you will be included as potential beneficiaries. In this way you retain access and can direct capital to yourselves if needed.

Whoever dies first, the Personal Investment Plan in his or her name will need to be included in the estate calculated for Inheritance Tax purposes. However, provided its value for tax purposes is less than the zero rate band applying at the date of death no tax will be payable in respect of the Personal Investment Plan.

The surviving spouse is subsequently able to have access to the plan without its value ever forming part of his or her estate. On death it will pass to the ultimate beneficiaries normally your children or whomever you have decided upon.

This explains how it was always envisaged the bonds would form part of the estates, and could therefore be liable for IHT, on each of Mr and Mrs J's deaths. As it was intended a separate calculation would have been completed on each death. This didn't happen because the trust wasn't set up properly and as I understand it, the whole liability was calculated on Mr J's death (the second). But since Mrs J's nil-rate allowance had passed to him under the new IHT rules, I don't think the failure of the trusts affected the actual amount of tax that needed to be paid. It's for this reason I don't currently intend to make an award in respect of the tax paid on Mr and Mrs J's estates.

It could have been possible for Mr and Mrs J to have arranged their affairs differently to have removed the bonds from their estate altogether. But to achieve this, it's likely they would have needed to give up some or all control of their assets. The adviser's report indicates this isn't necessarily something they wanted to do and is supported by the fact they were to be recorded as potential beneficiaries.

I note Mr T's comments in respect of the charges taken during the course of the investments. But these were primarily for the management of those investments and not for setting up the trusts. I've seen nothing to suggest Halifax didn't manage the bonds as it should have, so I don't think there's a case for it to refund any of the charges.

Because the bonds were set up on both of Mr and Mrs J's lives, the proceeds became payable on the second of their deaths. I note there was a delay in paying the proceeds following Mr J's death, but Halifax says this was because of a delay in receiving the relevant paperwork from Mr T and Mr D's solicitors. Mr T doesn't seem to be disputing this. Halifax paid a small amount of interest during the

period of delay and I'm satisfied the rate used was reasonable in circumstances where it wasn't at fault.

The failure of the proposed trusts does seem to have caused some confusion and I can understand why Mr T and Mr D felt they needed a legal opinion. I'm pleased to see Halifax has already agreed to refund this amount it receives evidence of payment. I also appreciate resolving this issue would also have caused Mr T and Mr D some unnecessary trouble and upset. In the circumstances, I'd be inclined to make a substantial (rather than a moderate) award and I think the £500 already offered is fair.

my provisional decision

My provisional decision is that I don't currently intend to uphold this complaint. I'm satisfied Halifax has already made a fair offer to settle the complaint. If they haven't already received this amount and they now wish to accept it, Mr T and Mr D should contact Halifax directly.