Financial Ombudsman Service

Complaint

Mr B complained that Baker Tilly Financial Management Limited gave him unsuitable advice to use an offshore life insurance bond within his Small Self-Administered Scheme (SSAS). By holding cash deposits within the bond he was exposed to higher risk and lower returns due to charges.

background

The complaint was investigated by one of our adjudicators. He wrote to Baker Tilly explaining why he thought the complaint should succeed. In summary he concluded:

- Mr B's objectives were to achieve a higher return than the bank account within his SSAS. At the time of advice it was generating 4.7% a year interest. Mr B was advised to invest in an offshore fixed rate deposit held within an offshore bond. The gross interest rate for the fixed rate deposit was 7.05%. The charges within the offshore bond were an establishment charge of 0.22% a year for five years in addition to a renewal charge of 0.225% each year. There was also an initial charge of 1% and yearly commission payments of 0.5%.
- The charges eroded the return of the offshore deposit. The comparison of the net return of the fixed rate deposit and the bank account was not a like for like comparison. Onshore deposits which could have been held directly offered interest in excess of 6% a year. Nationwide was quoted as offering 6.8% at the time of advice.
- Higher returns could have been achieved without using an offshore bond. The offshore bond increased the risk to Mr B's fund without a corresponding benefit. The offshore bond did not provide additional tax advantages as they were already available in the SSAS.
- Suitable advice would have been to use a range of onshore fixed rate deposit bonds.

Baker Tilly didn't agree with the adjudicator. It said, in summary:

- The advice given to the trustees was suitable. Mr B's objective was to invest in cash assets, it was not to have the cheapest solution. An onshore bond would have had to achieve a high interest rate to match the offshore bond returns after charges.
- Any redress should take account of Mr B's current marginal rate of tax, not anticipated retirement rate of tax.

The adjudicator didn't alter his view that the complaint should be upheld. But, he changed the way he thought any redress should be calculated.

my findings

I've considered all the available evidence and arguments in order to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I've come to the same conclusions as the adjudicator, and largely for the same reasons.

The gross return from the offshore bond was higher than the rate from the trustee bank account. But, the offshore bond's charges eroded the higher returns. So, the net return was little higher than the deposit account held within the SSAS. Comparing the return of the onshore bank account to offshore fixed rate deposits is not a like to like comparison. A better comparison would have been to compare the offshore returns, net of charges, with onshore fixed rate deposits.

The adjudicator's research showed that interest rates between 6 – 6.8% a year, could be attained in the UK. The trustees of the SSAS had opened a bank account with a UK bank. I agree that it is most likely that the fixed rate deposits could have been arranged directly with the trustees of the SSAS.

The use of the offshore bond did not provide greater tax efficiency. There was no diversity of deposits. The risk was also greater using offshore accounts as there was limited consumer protection. Investing in offshore deposits did not provide greater net returns to offset the additional risks associated with investing offshore. Given Mr B's objectives of investing in safe assets suitable advice would have been to invest directly in a number of fixed term deposits onshore.

fair compensation

My aim is to put Mr B as close to the position he would probably now be in if he had been given suitable advice.

I take the view that Mr B would have invested differently. It isn't possible to say *precisely* what he would have done differently. But I'm satisfied that what I set out below is fair and reasonable given Mr B's circumstances and objectives when he invested.

what should Baker Tilly do?

To compensate Mr B fairly, Baker Tilly must compare the performance of Mr B's investment with that of the benchmark shown below.

The compensation payable is the difference between the *fair value* and the *actual value* of the investment. If the *actual value* is greater than the *fair value*, no compensation is payable.

Baker Tilly should also pay any interest, as set out below.

investment name	status	benchmark	from ("start date")	to ("end date")	additional interest
Scottish Equitable International Bond	surrendered	average rate from fixed rate bonds	date of investment	date transferred	average rate from fixed rate bonds from date transferred

actual value

This means the actual amount paid from the investment at the end date.

fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, Baker Tilly should use the monthly average rate for the fixed rate bonds with 12 to 17 months maturity as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

Any additional sum paid into the investment should be added to the *fair value* calculation from the point in time when it was actually paid in.

Any withdrawal, income or other payment out of the investment should be deducted from the *fair value* at the point it was actually paid. That's so it ceases to accrue any return in the calculation from that point on. If there are a large number of regular payments, to keep calculations simpler, I will accept if Baker Tilly totals all those payments and deducts that figure at the end instead of deducting periodically.

how to pay compensation?

If there is a loss, Baker Tilly should pay such amount as may be required into Mr B's pension plan. That should allow for any available tax relief and/or costs, to increase the pension plan value by the total amount of the compensation and any interest.

If Baker Tilly is unable to pay the total amount into Mr B's pension plan, it should pay that amount direct to him. The amount should be reduced to notionally allow for the income tax that would otherwise have been paid.

The notional allowance should be calculated using Mr B's marginal rate of tax in retirement. For example, if Mr B would be a basic rate taxpayer in retirement and that rate would 20%, the *notional* allowance for tax would equate to a 20% reduction in the total amount. At retirement he would have been able to take 25% as a tax-free lump sum but the remaining 75% would have been subject to income tax at his marginal rate of tax. So the *notional* allowance for tax would equate to a 15% reduction in the total amount (20% on 75%).

why is this remedy suitable?

I have decided on this method of compensation because Mr B wanted to achieve a reasonable return without risking any of his capital.

The average rate for the fixed rate bonds is a fair measure given Mr B's circumstances and objectives. It doesn't mean that Mr B would have invested only in a fixed rate bond. It is the sort of investment return a consumer could have obtained with little risk to their capital.

Mr B has not yet used his pension plan to buy an annuity.

The additional interest is for being deprived of the use of any compensation money since the end date.

my final decision

I uphold the complaint. My decision is that Baker Tilly Financial Management Limited should pay the amount calculated as set out above.

Roy Milne
ombudsman