

## **complaint**

Mr and Mrs D have complained through their representative about the advice they received from The Royal Bank of Scotland Group Independent Financial Services Limited ("the business") in 2007. Their representative has stated that Mr and Mrs D should have been advised to repay their outstanding debts rather than invest most of their capital in bonds. The representative considers that the business' offer of redress is insufficient as it does not take account of this consequential loss.

## **background**

The business agreed Mr and Mrs D should not have been advised to invest in the bonds in 2007, and offered to compensate them on the basis that the capital would have been placed in its Reward Reserve savings account. However, as noted above, the representative did not agree this was adequate compensation, and so referred the matter to this service.

The adjudicator did not find the business' suggested settlement to be unreasonable, but considered interest at 8% gross a year should be added to the compensation from the date Mr and Mrs D surrendered the bonds to the date of settlement. He did not believe the adviser was aware of Mr and Mrs D's debts. He was also not persuaded Mr and Mrs D would necessarily have agreed to repay the debts, had such a recommendation been made.

Mr and Mrs D's representative responded saying that the business must have been aware when opening an account for Mr and Mrs D just prior to the time of advice that they had significant existing debts. It believes these debts would have been drawn to the business's attention as a result of the credit check conducted prior to opening the account and that they could only open a basic account as a result.

The business has stated that the adviser was independent and not tied to the bank. As a result, he would not have had any access to information obtained in relation to opening up Mr and Mrs D's bank account prior to the time of advice. The business added it had not provided any documentary evidence to indicate any of the debts that form the basis of the claim (apart from Mr and Mrs D's mortgage) existed at the time of advice. Furthermore, it does not appear Mr and Mrs D have repaid any of the suggested debts when the bonds were encashed in 2009.

Mr and Mrs D's representative confirmed it was trying to obtain further evidence of Mr and Mrs D's circumstances at the time of the advice and subsequently. However, despite being given ample time to provide additional evidence or submissions to support Mr and Mrs D's case, nothing further has been forthcoming. Therefore, the matter has been passed to me for consideration.

## **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 should firstly say that I am aware Mr and Mrs D's representative has referred to a decision made by an ombudsman on another case it believes to be similar to this one. However, as the adjudicator has explained, each complaint is considered on its individual merits.

Further, I appreciate the representative has made extensive efforts to try and establish Mr and Mrs D's position regarding any debts they owed at the time of the advice, and what may have happened to these more recently. I can understand that it can be difficult to find such information.

However, ultimately I must determine the complaint on the basis of the available evidence.

Clearly there is no dispute between the parties that Mr and Mrs D should not have been advised to invest in the investment bonds in 2007. And so the issue that remains unresolved is the most appropriate way they should be compensated for the unsuitable advice. I have considered this point.

The key area of contention concerns whether Mr and Mrs D had any debts at the time of the advice, and if so whether they should have been advised to repay these in preference to investing or saving the capital.

I have reviewed the documentary evidence from the time the advice was given. The fact find document completed by the adviser records that Mr and Mrs D have no debts or liabilities such as credit cards. Mr and Mrs D signed this document to confirm they understood they would be advised on the information they had provided.

In addition, the adviser also wrote to Mr and Mrs D setting out his recommendation. The letter stated they had no debts.

I have noted the points made by Mr and Mrs D. They say they told the adviser about their debts, but he said he would deal with this another time. They should not worry about this, and simply sign the document.

However, I also have to take into account the fact that the adviser has provided his recollections of what happened. He states he was not made aware by Mr and Mrs D that they had any debts. He was also able to refer to some personal details about Mr and Mrs D, which corresponds with information provided separately by their representative. It therefore seems the adviser has a reasonable recollection of these consumers.

Further, whilst Mr and Mrs D's representative believes the adviser should have been aware of the consumers' debts, presumably even if he was not informed of this by them, it seems this is not correct. The business has stated that the adviser would not have had access to such matters as Mr and Mrs D's bank account details or credit rating.

There are therefore two conflicting versions of what happened. In the circumstances, I am not persuaded I can agree that it is more likely than not the adviser was informed by Mr and Mrs D they had various debts, but chose to disregard this.

In saying this, I am also mindful that the sum Mr and Mrs D invested in the bonds was only part of the capital they held at the time. However, they had apparently shown no appetite or inclination to use this to repay any of their debts. In addition, they did not take such action after surrendering the bonds in 2009, when again they could have reduced their debt burden if this was important to them. It is therefore open to question whether they would have accepted advice to repay the debts, even if this had been offered.

I have noted the comments Mr and Mrs D's representative has made about the regular withdrawals ("income") they were taking from the bonds. It has been suggested that because

the level of withdrawals were relatively high, despite Mr and Mrs D being low risk investors, this undermines any reliance that can be placed on the documentary evidence. However, I am unable to agree.

According to his letter, the adviser recommended Mr and Mrs D limit their withdrawals to 4% of the capital invested. This was apparently in line with the business' guidelines for low risk investors. However, it seems the consumers wished to receive a higher level of income, and elected to increase the withdrawals to 5%.

The representative then refers to the later position when the withdrawals were increased to 7.5%. It says the adviser "allows" Mr and Mrs D to take out this "ridiculous capital-eroding sum". But this seems to be a misinterpretation of the true position.

It seems Mr and Mrs D wished to obtain a higher level of income from the bonds. The adviser wrote to them explaining the risks of such a strategy, including the potential to erode the capital, but it seems the consumers were intent on going ahead.

Ultimately, this was Mr and Mrs D's money and they could do what they wanted with it. I therefore do not consider the adviser was in any position to prevent them from taking an action despite his warning of the implications.

In summary, I have seen insufficient evidence to persuade me the adviser was aware Mr and Mrs D were in debt when he gave them the advice in 2007. Nor have I seen substantive evidence of the debts their representative has referred to. So in the circumstances I am unable to order the business to compensate Mr and Mrs D as their representative has suggested.

Overall, I consider the methodology proposed by the business in its letter to Mr and Mrs D's representative dated 20 June 2012 provides a fair and reasonable means of resolving this dispute. However, interest of 8% gross a year should be added to any investment loss calculated as at the date the bonds were surrendered, from the date of surrender to the date of settlement. Tax may be payable on this interest.

### **my final decision**

I uphold the complaint in part, and order The Royal Bank of Scotland Group Independent Financial Services Limited to pay Mr and Mrs D compensation as explained above.

Doug Mansell  
**ombudsman**