

complaint

Mr and Mrs B complain that shortly after setting up their Family Suntrust, AXA Wealth Services Limited (AXA) withdrew an important facility - the non-proportionate allocation of investment growth facility. They say they have lost out financially as a result.

background

The Family Suntrust (FST) allowed individual pensions to be grouped together and investment growth to be re-allocated between the members' pensions on a non-proportionate basis. I'll refer to this as the "*non proportionate allocation facility*" in the rest of this decision.

Mr B completed the paperwork to apply for the FST in June 2015. In July 2015, AXA wrote to let Mr B know that HMRC were looking into the FST. Mr B's FST was set up after this, in late 2015. In 2016, Mrs B was added to the FST. The instruction to transfer money into their FST was given on 1 April 2016 and confirmed on 5 April 2016. Immediately prior to the transfer AXA pointed out that discussions with HMRC were still ongoing. It said it could not guarantee all the features going forward, in particular the *non proportionate allocation facility*.

One of our adjudicators investigated this complaint and did not uphold it. He said, shortly after the FST was applied for, HMRC stopped registering these schemes. Registration resumed in October 2015. AXA informed Mr and Mrs B's advisers then, that although the FST had been registered, it could not guarantee that all the features of it would be available in the future.

Our adjudicator thought AXA had clearly made the point that the *non proportionate allocation facility* wasn't guaranteed. He also said the terms and conditions made it clear, in any event, that this facility could be withdrawn.

AXA gave notice in writing on 2 August 2016 that the *non proportionate allocation facility* would be withdrawn on 2 September 2016. However, on 28 July 2016 Mr and Mrs B's AXA representative offered them an ad-hoc review (to look at allocation of investment growth). This review was not completed.

AXA offered Mr and Mrs B £200 for their loss of expectation, as they were led to believe the ad-hoc review would occur. Our adjudicator considered AXA's offer was fair and reasonable in all the circumstances.

Mr and Mrs B didn't accept our adjudicator's findings. Their representative said AXA's representative had provided re-assurances that the *non proportionate allocation facility* wouldn't be removed.

Another adjudicator carefully considered Mr and Mrs B's representations. The second adjudicator shared the original adjudicator's view. The second adjudicator said AXA had made it clear at the point of application, shortly after the registration and prior to the transfer of funds that the *non proportionate allocation facility* wasn't guaranteed.

Mr and Mrs B made some further representations. They said that the AXA representative had given re-assurances about the scheme and its commitment to the UK market. They said the AXA representative had said it wouldn't re-open the FST unless it was going to be

available for the long term because AXA had a reputation to protect and wouldn't do anything to undermine it.

Our second adjudicator wasn't persuaded to change his view and so the case has been referred to me for a decision.

my findings

I've considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I agree with our adjudicators and largely for the same reasons.

Mr and Mrs B have made it clear that the *non proportionate allocation facility* was for them a key feature of the FST and this led them to apply for the FST and to transfer pension funds into it.

I think AXA pointed out very clearly at a number of decision points that the *non proportionate allocation facility* was not guaranteed. When Mr and Mrs B representative instructed AXA to proceed with the transfer, AXA double-checked it should still go ahead, pointing out the facility wasn't guaranteed. So, I think Mr and Mrs B were given ample opportunity not to proceed if they considered the availability of such a facility was so important to them.

The terms and conditions of the scheme, which Mr B signed and agreed to at the time of application in June 2015, also said that the *facility* could cease to apply. This service would not usually interfere where a firm is exercising its legitimate commercial judgement to change its terms. I see no reason to do so here.

Looking at the terms and conditions of the FST, non-proportionate allocation wasn't allowed if the participant had Fixed Protection. Mr B said he had Fixed Protection 2012 when he completed the paperwork to apply for the FST.

Mr and Mrs B's representative said he had worked on the basis that Mr B's Fixed Protection 2012 (which would've been £1.8 million) would be rescinded through the FST application process. It is not apparent from what I've seen that this was the case. In 2016, the Lifetime Allowance for Fixed Protection was £1.25 million, so significantly less than the 2012 limit. Based on what I've seen, I think it unlikely that Mr and Mrs B could've made use of the *non proportionate allocation facility* whilst Mr B had Fixed Protection 2012.

Mr and Mrs B's AXA representative had arranged an ad-hoc review meeting to assess their, *non proportionate allocation*. Shortly after that review appointment was made AXA withdrew the *facility*. Mr B said the "*review would've meant that approximately £140,000 would've been allocated to my wife, saving me roughly £77,000 of lifetime allowance tax eventually*".

But, it seems unlikely that Mr and Mrs B would've been allowed to make use of the *non proportionate allocation facility*, even if the meeting had taken place before the *facility* was withdrawn, if Fixed Protection 2012 was to be retained at the higher limit.

I think AXA's offer of £200 adequately compensates Mr and Mrs B for the fact that they were expecting an ad hoc review to take place, which didn't occur.

For the reasons I've explained I do not consider that Mr and Mrs B have lost out financially as a result of AXA's actions and so I make no award for financial loss.

my final decision

I am aware that AXA Wealth Services Limited has made an offer to pay Mr and Mrs B £200 compensation. I think this offer is fair and reasonable in all the circumstances for the reasons I've explained above. My decision is that AXA Wealth Services Limited should pay Mr and Mrs B £200.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs B either to accept or reject my decision before 8 May 2018.

Kim Parsons
ombudsman