Financial Ombudsman Service

Complaint

Mr B has complained that Baker Tilly Financial Management Limited gave him unsuitable advice to use an offshore life insurance bond within his Funded Unapproved Retirement Benefit Scheme (FURBS).

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 invest in safe assets. Baker Tilly had recommended that £236,000 held in an offshore bond should be invested in a single fixed term deposit. That was with Kaupthing Singer & Friedlander Limited (KSF). To mitigate risk the adviser ought to have recommended a number of deposit accounts, as they had done at the same time for Mr B's Small Self-Administered Scheme.
- By investing his money offshore Mr B was taking greater risks than if he held onshore deposits.
- The charges for the offshore bond eroded the returns he received and it was less than could have been achieved through onshore bonds.
- Whilst the taxation of FURBS are complex he was not persuaded that the offshore bond offered tax advantages which outweighed the increased risk and charges.
- KSF went into administration shortly after the investment and has remained so since then. This has stopped Mr B from taking benefits from his FURBS.

Baker Tilly did not agree with the adjudicator. It said, in summary:

- The advice to the trustees was suitable for Mr B's objectives to invest in cash assets. The objective wasn't to have the cheapest possible solution.
- The offshore risk was not unreasonable compared to onshore deposits.
- The charges were explained to Mr B and if a fee had been arranged the cost would be the same as the commission charge.
- The method for calculating the redress ought to account for Mr B's current marginal rate of tax not his anticipated retirement tax rate. The distress and inconvenience payment recommended is inappropriate.

The adjudicator replied, in summary:

- He still thought the complaint should succeed.
- It appears pre A-day FURBS, if paid out as a lump sum, wouldn't generate a further tax liability to Mr B. The redress ought to be amended to make a notional allowance for tax if it can be shown the benefits paid as a lump sum would have incurred a tax liability.
- The payment for distress and inconvenience should be £250.

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.

I agree that by investing in a single fixed term deposit the advice was not sufficiently diverse to mitigate the potential risks of the bank going into administration. Baker Tilly had advised Mr B separately through his SSAS to split his holdings in deposit accounts to reduce risk. The investment should not have been made into a single fixed term deposit.

I acknowledge that the gross returns from the offshore deposit accounts were higher than the trustee bank account rate Mr B was receiving. However the offshore bond charges eroded the higher gross returns to such an extent that a better return could have been made through onshore fixed term deposits.

Investing in offshore deposits did not provide greater net returns to offset the additional risks by investing offshore. Given Mr B’s objectives of investing in safe assets the advice should have been to invest directly in a number of fixed term deposits onshore.

I note that Baker Tilly had said that an offshore bond offered tax advantages. But, I am not persuaded that the benefits were worth taking the additional risk of investing offshore. Any tax advantages would be eroded by Mr B’s the charges.

Mr B’s representatives have said that the continued administration of KSF has meant Mr B could not take the benefits of the FURBS at his intended retirement. This caused Mr B inconvenience which he ought to be compensated for.

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 is not possible to say *precisely* what he would have done differently. But I am 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.

Baker Tilly should pay Mr B £250 for not being able to draw benefits from the FURBS due to the continued administration of KSF.

investment name	status	benchmark	from (“start date”)	to (“end date”)	additional interest
CMI Global Investor Offshore Bond	mixed	average rate from fixed rate bonds	date of investment	date of my decision	8% simple p.a. from date of decision

actual value

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

My aim is to return Mr B to the position he would have been in but for the unsuitable advice. This is complicated where an investment is illiquid due to the continued administration of KSF. It would be difficult to know the *actual value* of the investment until all dividends have been paid by KSF.

Baker Tilly may wish to require that Mr B provides an undertaking to pay Baker Tilly any amount he may receive from the investment in the future.

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 an amount into the FURBS so that its value is equal to the fair value. If Baker Tilly is unable to pay the total amount into Mr B's FURBS, 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 within the FURBS and if the benefits were paid as a lump sum to Mr B.

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 would be 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.

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.
- £250 for the inconvenience caused by not being able to draw benefits from the FURBS due to the continued administration of KSF.

Roy Milne
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