

complaint

Mrs C complains that she failed to receive advice from Ashcourt Rowan Financial Planning Limited (ARFP) in July 2011 as to how she could release a capital sum from her investments effectively. As a large part of her savings was held in an investment bond, she needed to know whether to use the whole of this investment or part-surrender it along with other investments.

As the adviser didn't show much interest in offering advice, she took the decision herself to part-surrender the bond for the amount she required. This incurred a large tax charge as she part-surrendered the whole bond, rather than fully surrendering whole segments which would have incurred no tax charge at all. Mrs C feels that, if the adviser had given her this factual information, she would have surrendered the bond in the most tax-efficient way.

background

ARFP didn't uphold her complaint. It said that it had recently inherited Mrs C as a client from another intermediary and the adviser's intention at the meeting would have been to introduce himself, explain the service he provided and his terms of business. He would not have been in a position to provide advice at this meeting. It's evident that Mrs C accepted this and acted on her own initiative in surrendering the bond.

This complaint was investigated by one of our adjudicators, who felt that it could not be upheld. He said that:

- ARFP was not responsible for the tax charge Mrs C incurred as it didn't give her advice to surrender the bond as she did;
- she could have obtained advice elsewhere once it was evident that ARFP was not willing or able to do so;
- she did consult her accountant and the bond provider before deciding to part-surrender this investment.

In response, Mrs C disagreed with the adjudicator's assessment and said that:

- ARFP did not explain that she first had to agree to its terms of business. The adviser said that he couldn't advise her on the bond because he had not set it up for her;
- the adviser was more interested in selling her more investments and not addressing her immediate need;
- HMRC has agreed to rectify her tax position by requesting the bond provider to process the part-surrender in a way that doesn't give her a tax liability.

As no agreement has been reached, the complaint has been referred to me for review.

findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

It's evident that a meeting did take place between Mrs C and the ARFP adviser. Also, I'm inclined to believe that Mrs C did seek advice in July 2011 about releasing a large capital sum from her investments. Regrettably, there's little evidence to confirm the nature of the discussions that took place at this meeting.

I can appreciate that, as the adviser had recently inherited Mrs C as a client from another firm, he would need to present himself and set out his terms of business to her. Also, if she did ask him to give investment advice, he would need to have carried out a detailed analysis of her financial circumstances before doing so. I can understand why he might need to defer this to a later meeting.

However, if Mrs C specifically asked him to comment on the merits of surrendering her investment bond, it is reasonable to suggest that he could have provided factual information on the respective tax implications of part-surrendering the bond and surrendering whole segments, even if he couldn't give her advice. In that way, Mrs C might have been able to make a better informed decision about surrendering the bond.

Having said that, there is little evidence to confirm what Mrs C requested the adviser to do at this meeting and, therefore, I can't be sure that, whatever the adviser's response, he has directly caused Mrs C to incur the significant tax charge.

As it is, Mrs C confirmed that HMRC has agreed to *rectify* her tax position as if the part-surrender had been carried out by cashing-in whole segments of the bond. In this way, I understand that Mrs C will not now incur any tax charge.

On balance, I'm not convinced there's sufficient evidence that Mrs C's decision to surrender the bond in a way that incurred a large tax charge can be directly attributed to ARFP.

decision

For this reason, my final decision is that I don't uphold Mrs C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 15 February 2016.

Kim Davenport
ombudsman