

**Ombudsman determination**

**CIFO Reference Number: 16-000178**

**Complainants: [The complainant]**

**Respondent: [Company A]**

It is the policy of the Channel Islands Financial Ombudsman (CIFO) not to name or identify complainants in any published documents. Any copy of this determination made available in any way to any person other than the complainant or the respondent must not include the identity of the complainant or any information that might reveal their identity.<sup>1</sup>

I have considered the further representations made by [the complainant] on 9 January 2017 and by her legal representative on the same date. These further representations do not change my decision and I make the following observations in response to some of the points raised.

*Second complaint – Negative interest rate on EUR-denominated assets*

[The complainant] writes that, if the view expressed in my provisional determination were to remain the same, it would be

“a radical result which would conflict with decisions of the [local] Court.”

Under the law that establishes our mandate, several factors are considered in reaching a decision of what would be fair and reasonable in the circumstances. [The complainant] remains free to pursue her complaint through the court process if she chooses to reject my determination.

*Third complaint – losses associated with currency conversion following deduction of tax*

[The complainant] suggests that [Company A] have provided incorrect information to the Ombudsman in claiming it is normal business practice to deduct UK tax. The allegation that incorrect information has been provided to the Ombudsman is a serious one. In support of this allegation, [the complainant] cites the example of another [redacted for anonymisation purposes] resident who was a customer of [Company A] and did not pay UK tax; however, examples like this, taken in isolation, do not constitute sufficient evidence to counter [Company A's] submission that deducting tax was their “normal business practice”. In any event, I consider that it was reasonable for [Company A] to accept advice from their advisers in accordance with the provisions of the trust instrument.

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<sup>1</sup> Financial Services Ombudsman (Jersey) Law 2014 Article 16(11) and Financial Services Ombudsman (Bailiwick of Guernsey) Law 2014 Section 16(10)

[The complainant] also submits that [Company A] did not have to follow the advice given by [Company A's adviser] and, separately, that [Company A's adviser's] were conflicted because they also advised her former employer [redacted for anonymisation purposes], who sponsored the pension plan from which she received benefits.

I have already addressed in my provisional determination the decision by [Company A] to follow the advice given [by their advisers]. The allegation that [Company A's adviser] was conflicted is a separate allegation against [Company A's adviser] and not applicable to the current complaint against [Company A].

I therefore do not uphold the complaint, for the reasons set out in my provisional determination.

Douglas Melville  
Principal Ombudsman and Chief Executive

Date: 29/03/16

**Ombudsman determination**

**CIFO Reference Number: 16-000178**

**Complainants: [The complainant]**

**Respondent: [Company A]**

[The complainant] complained about tax deducted following a distribution from a pension trust. When the tax was refunded, she complained that the transfer from GBP to EUR had resulted in a financial loss due to the change in exchange rates. In addition, she expressed concerns about [Company A's] management of her pension trusts.

**Background**

[The complainant] was a member of two pension plans, the [Pension Plan B] and the [Pension Plan C].

In 2010 [the complainant's] employment with [the employer] ended and in 2013 she sought a lump sum distribution. As trustees, [Company A] obtained advice from [an adviser].

[The complainant's] complaint to CIFO was threefold:

1. The trustees of the [Pension Plan B] refused requests made by her in 2003 to invest assets held for her benefit under that plan in quoted funds. Subsequently, the same investments [the complainant] suggested were later made by the trustees.

[The complainant] considered that [Company A] had acted unreasonably by:

- a) failing to take into account their wide investment powers or the interests of the trust beneficiaries;
  - b) introducing a requirement that investments must be agreed by [the complainant's previous employer] despite this not being present in the text of the plan; and
  - c) taking investment advice from a subsidiary in the same corporate group.
2. [Company A] were not acting in her best interests (and the interests of the beneficiaries) by implementing a negative interest rate on assets denominated in euros held for her under the pension trusts. In support of this assertion, [the complainant] provided research which confirmed that a EUR savings account at another bank would pay an interest rate of 0.25% on deposits over €250,000. In her subsequent letter to me dated 23 September 2016, [the complainant] suggests another bank would pay 0.6% interest.
3. [Company A] deducted £230,639.20 from the distribution to pay tax to HM Revenue & Customs ("HMRC"). It was subsequently confirmed that no tax was payable. When this sum was refunded, [the complainant] considered that the trustee had unnecessarily converted the cash from EUR into GBP in order to complete the distribution. [Company A] confirmed in an email to [the complainant] dated 13 April 2015 that the need to convert the funds into GBP was a consequence of their understanding, based on [their adviser's] advice, that UK tax had to be deducted.

During this process, [the complainant] separately paid for a hedge against the EUR/GBP currency exposure. She sought a refund of this amount from [Company A] because she claimed that this expense arose from [Company A's] requirement to convert the distribution into pounds sterling to make the tax payment to HMRC.

The case handler did not uphold the complaint. [The complainant] disputed the case handler's analysis on the following grounds:

1. The case handler should have considered her requests because they were made within CIFO's time limit, not in 2003;
2. The advice [Company A] relied on from [their adviser] was wrong for reasons set out in a letter from [the complainant's] solicitor dated 30 October 2013. Furthermore, the tax was subsequently refunded by HMRC in its entirety.
3. [Company A] should have obtained a positive interest rate from another bank rather than a negative interest rate offered by the [Bank A].

## Findings

### *First complaint – [Company A's] refusal to make suggested investments*

In a letter dated 21 April 2016 from [the complainant] to CIFO, supplementing her initial complaint by adding details of her complaint against [Company A] for not investing in specific funds which she directed them to do. Paragraph 2 reads as follows:

*“One of my complaints was that the trustee of these [sic] [Pension Plan B] refused my repeated request made to it in 2003...”*

However, I acknowledge [the complainant] now states this request was made in 2013.

The [Pension Plan B] is a vehicle for employees and ex-employees of [the complainant's previous employer] and accommodates a number of investment choices. I do not find it unreasonable that [Company A] did not tailor the plan to the specific interests of one member. Furthermore, I note that these investments were accommodated in a separate plan held personally for [the complainant] with [Company A].

### *Second complaint – Negative interest rate on EUR-denominated assets*

I accept [the complainant's] assertion that the negative interest rate was absorbed by the [Bank A] rather than [Company A]. Notwithstanding this, I do not consider [Company A] to have acted erroneously in holding the funds with the [Bank A].

As a trustee, [Company A] would consider a number of factors as part of their decision as to how best to manage the trust assets. These factors include the risk profile of the bank involved. I note that the central bank offered -0.4% at the time, which is the same rate as the [Bank A]. I further note that in one of the examples [the complainant] has given as to where her assets should have been placed, the bank in question is unrated by the major credit agencies, compared to [Bank A's] rating of Aa3. Furthermore, the account suggested by [the complainant] with the alternative bank had restricted access - 189 days' notice - and there is no certainty how long the interest rate offered would apply.

I take the view that [Company A] have not been unreasonable in being careful where they place funds. [Company A] have suggested that, since the negative interest rate was moved to be absorbed by clients in April 2016 the options have been available for [the complainant] to ask [Company A] to move the cash into another currency or to invest in one of the EUR-denominated funds available, but [the complainant] has not yet done so.

Furthermore, [Company A] also claim that, via their treasury department, they continue to monitor third party banks who may hold EUR-denominated cash but there are no other suitable options available at present. In addition, in selecting an appropriate bank, [Company A] also consider other factors that can impact upon the cost of administration, such as quality and ease of reporting, processing of payments and receipts of funds, and additional KYC requirements. On balance, I cannot conclude that [Company A's] decision to hold the funds with their related company was unreasonable.

### *Third complaint – losses associated with currency conversion following deduction of tax*

I acknowledge the decision of HMRC and that [the complainant] had tax deducted from her distribution that later proved to be reclaimable from HMRC. However, I agree with the conclusions of the case handler that this aspect of the complaint should not be upheld.

I consider that [Company A] exercised their contractual right to take advice reasonably and were not unreasonable in relying on the advice of [their adviser] rather than that of [the complainant's] own legal representative.

Deduction of tax liabilities at source for remittance to HMRC is normal business practice and the obligation of the trustee. The tax proceeds deducted from [the complainant's] distribution were recoverable from HMRC at a later date; however, [the complainant] obtained legal advice that sought to pre-empt this process, which I can certainly understand given the potential to avoid foreign exchange risk. Nonetheless, given that she would have received a refund from HMRC anyway, it is not reasonable in the circumstances for [Company A] to bear the costs incurred by [the complainant] for the hedge transaction and legal representation in order to achieve the positive outcome that she could have obtained through HMRC's claim process.

In relation to the currency conversion, the associated costs, whether hedged or not, would always have been borne by [the complainant], given the HMRC remittance was in GBP and [the complainant] wanted the distribution in EUR.

In relation to the hedge fee paid to manage currency exposure on the tax remittance, I consider that this was a personal choice made by [the complainant] and it would not be reasonable to hold [Company A] liable for this.

## **Final decision**

My final decision is that I do not uphold this complaint.

[The complainant] must confirm whether she accepts this determination either by email to [ombudsman@ci-fo.org](mailto:ombudsman@ci-fo.org), or letter to Channel Islands Financial Ombudsman, PO Box 114, Jersey, Channel Islands JE4 9QG, by **24 March 2017**. The determination will become binding on [the complainant] and [Company A] if it is accepted by this date. If we do not receive an email or letter by the deadline, the determination is not binding. At this point [the complainant] would be free to pursue her legal rights through other means.

If there are any particular circumstances which prevent [the complainant] confirming her acceptance before the deadline of 24 March 2017, she should contact me with details. I may be able to take these into account, after inviting views from [Company A], and in these circumstances the determination may become binding after the deadline. I will advise both parties of the status of the determination once the deadline has passed.

Please note there is no appeal against a binding determination, and neither party may begin or continue legal proceedings in respect of the subject matter of a binding determination.

Douglas Melville  
Principal Ombudsman and Chief Executive  
Date: 16/12/16