



Case study: Investments

Investments: advisory responsibility of the Bank

Themes: unsuitable investments, placing complainants back in the position they would have been in, tax losses

Mr and Mrs M approached a bank for advice in 2008 on investing some of their cash funds. The bank recommended two investments: Bond A and Bond B, which each contained a series of investment funds and Mr and Mrs M invested accordingly. A few years later in 2012, as they had accumulated savings from a maturing bond which could be reinvested, Mr and Mrs M sought further investment advice. The bank made some investment recommendations and also reconfirmed the suitability of Bond A and the funds within it.

Sometime later, Mr and Mrs M were informed that the risk profile of the investment Fund J, held within Bond A, would be increasing due to a recent restructuring by the fund company. The bank had provided the financial advice to purchase the Bond A and had reconfirmed its suitability in 2012, but the bank said it had no ongoing responsibility to ensure the suitability of the bond and the underlying fund investments. By the time the issue with Fund J's changing risk profile came to light, the bank no longer had Fund J on its "approved" list and it could no longer provide any advice with respect to that particular fund investment.

Under the local tax provisions, investments such as Bond A, if held for 10 years without withdrawals, become exempt from the usual 20% capital growth tax when they are sold. Mr and Mrs M had not yet held Bond A for the 10 years required, and so, despite the increased risk of Fund J which made it unsuitable for them in their view, they were reluctant to sell the fund or withdraw from Bond A altogether.

Mr and Mrs M were unhappy with the position they were in; the risk profile of the Fund J investment was no longer suitable for them, and yet they could not sell out of Fund J without triggering a significant tax liability. The bank confirmed that it was unable to provide them with advice on what to do with Fund J. Mr and Mrs M complained to the bank and argued that the bank had an ongoing responsibility to advise on those investments it had advised them to make. The bank did not agree but nevertheless offered to reimburse any tax liability from the sale of Fund J. Mr and Mrs M accepted this offer from the bank and sold Fund J from within Bond A. However, they were then informed that this sale of Fund J was likely to expose the other funds within Bond A to tax when they were sold. By that time, the sale of Fund J could not be stopped. The proceeds of the Fund J sale were taxed at 20% which the bank had agreed to reimburse. Mr and Mrs M then raised a complaint against the bank for this potential new tax liability affecting all of the other funds within Bond A. It now appeared that all of the funds in Bond A would no longer receive the preferential tax treatment even if held for the

normally required period. Their complaint was subsequently referred to the Channel Islands Financial Ombudsman (CIFO).

After reviewing the case, CIFO accepted that the bank was not a tax advisor but considered that the bank ought to have been aware that selling a fund within Bond A would have other consequences, including potential tax liabilities, and so CIFO considered that the bank should have advised Mr and Mrs M to obtain advice before accepting their offer and proceeding to sell Fund J.

CIFO decided that it was fair and reasonable that the bank should reimburse any tax liability which arose from the sale of the other funds within Bond A. While the amount of the tax liability was not yet known, the bank agreed to pay the amount once presented by Mr and Mrs M with appropriate evidence of their loss. This was in addition to the £539.58 tax liability already incurred on the sale of Fund J which the bank had also agreed to reimburse.

CIFO also acknowledged the distress and inconvenience caused to Mr and Mrs M in this matter and determined that the bank should pay Mr and Mrs M £500 compensation for distress and inconvenience.

Mr and Mrs M accepted the decision of the Ombudsman and the issue was resolved.