DRN-4581175

Financial Ombudsman Service

The complaint

Mr and Mrs H complain that a predecessor business of Succession Wealth Management Ltd ("Mackenzie") wrongly advised them to encash an offshore investment bond. The claims management company (CMC) representing them say that alternative methods of meeting their objectives weren't considered and Mr and Mrs H incurred an avoidable tax liability and loss as a result.

What happened

In 2014 Mr and Mrs H engaged with Mackenzie to receive investment advice. They had a portfolio consisting of a stocks and shares ISA each (worth around £6,000 and £11,000 respectively) and the bond, which was in Mrs H's sole name. The bond had been started in 2009 with an initial investment of £100,000 and by the time of the advice was valued at around £150,000.

Following a review of Mr and Mrs H's circumstances and attitude to risk, an initial recommendation was made in March 2014 to make some fund changes to Mrs H's ISA, as it hadn't been performing as well as Mr H's.

Mr and Mrs H then decided they wanted to relocate and needed additional money to do so. As withdrawals from the bond would at that point have incurred an early surrender fee (as it had been in place for less than five years), the ISAs were encashed to provide the required money.

There then followed a further, more comprehensive recommendation in July 2014. Mr and Mrs H required around £30,000 cash for the purchase of two cars and consideration was given to how this could be achieved for them. The bond was no longer subject to early surrender fees at this point, so Mackenzie advised surrendering it in full, taking the cash amount for the cars, setting aside a proportion for the income tax liability that would be created by the encashment, and investing £15,000 each into two new stocks and shares ISAs and the balance, just under £80,000, into a collective investment account (CIA), across a portfolio of funds matched to their 'balanced' attitude to risk.

This recommendation was implemented, although with an additional £10,000 cash needed, related to relocation costs, reducing the amount placed into the CIA to just under £70,000.

This arrangement remained in place for at least the next four years, with Mackenzie continuing to advise Mr and Mrs H until it was purchased by Succession in November 2018. A complaint about the 2014 advice to encash the bond was then made to Succession by the

CMC in August 2019.

The complaint was upheld in part. The recommendation letter of July 2014 has indicated that the bond encashment would lead to only a basic rate tax liability for Mrs H. However, even with top slicing applied, a higher rate liability had in fact been incurred, so Succession offered to refund this amount, £4,395.20, plus interest.

This offer wasn't accepted, and the matter was referred to this service.

I issued a provisional decision in which I said, in part:

"To recap, the crux of the complaint is that Mackenzie incorrectly recommended the full encashment of the bond, which left Mr and Mrs H with an unnecessary tax liability and an investment loss. The CMC feels that alternatives to full encashment weren't properly considered, and the money required by Mr and Mrs H should've been taken as a tax-free withdrawal from the bond, which had been performing well up to that point, with the bond then left as it was and a further review carried out once Mr and Mrs H's circumstances had settled down.

I accept on the face of it, that a part withdrawal was a reasonable alternative course of action to what Mackenzie recommended. (Although, with £40,000 cash ultimately being required by Mr and Mrs H, it's likely that amount couldn't have been taken without incurring some immediate tax liability. When encashment occurred in August 2014 the bond was into its sixth year so only £30,000 – 6 x 5% of the original £100,000 – investment could've been taken without incurring a tax liability at that point).

But simply because there was potentially another way of achieving Mr and Mrs H's objective doesn't by default render the recommendation made by Mackenzie unsuitable.

As far as I can see, Mr and Mrs H had actively approached Mackenzie for advice on their whole portfolio at the start of 2014. I therefore don't think it was unreasonable for Mackenzie to look at everything and make recommendations where it felt things could be improved – provided any changes were properly reasoned and explained.

*The 'main' recommendation letter of July 2014 said that Mr and Mrs H "*have stated that you would like to withdraw £30,000 in order to buy a car for both yourselves, and your son. This can be easily arranged and I have enclosed the necessary paperwork to do this. However, you feel inclined to fully surrender this investment and look for alternative investment options but would like some advice before making your final decision.*"*

I accept that it was Mackenzie's responsibility to advise Mr and Mrs H, not to simply act upon their apparent desire to encash the bond. But it does look like part withdrawal was discussed, but at the same time consideration was given to the alternative of full surrender.

The recommendation letter went on to deal with the bond's tax situation comprehensively, explaining the potential downsides to an offshore bond and pointing out that this type of bond was generally recommended for people who were likely to be paying tax at a lower rate by the time it was surrendered. (As an aside, it's not clear why a bond of this nature was originally recommended to Mrs H in 2009).

The recommendation letter estimated a tax liability of around £10,000, given the increase of £50,000 of the previous five years. It ultimately proved to be less than this due to top slicing, at around £8,200 (a small amount related to Mrs H's employment). As noted, £30,000 could've been withdrawn without an immediate liability to tax. But income tax on the overall gain would've been due at some point and while management of the surrender could've helped to reduce the total amount ultimately paid – for instance by encashing over two tax years, depending on Mrs H's ongoing income situation – Succession has made an offer that addresses this to an extent. And potentially quite a generous one, as it means Mrs H effectively paid tax of only around £3,800 on a gain of £50,000 over five years.

But the size of the liability and the offer aside, I don't think it was unreasonable for

Mackenzie to make a recommendation that involved creating a tax liability, not when it was clearly highlighted and explained to Mr and Mrs H, and the tax would've been payable anyway. And moreover, the recommendation moved the money into a beneficial tax environment – ISAs that would be regularly fed from the CIA, in which gains would be subject to capital gains tax (with a separate annual allowance) rather than income tax. And Mackenzie was careful to ensure no early encashment fees were incurred.

In terms of investment loss, I'm not sure it's been made clear as to what that might have been. While the recommendation meant the money changed wrapper it nevertheless remained invested. The investments within the offshore bond had performed very well. But that was between 2009 and 2014, a period that saw a very significant stock market rise.

2014 onwards was a different matter and if the funds recommended for the CIA didn't perform as well as those in the bond had done (and there's no indication that's the case – certainly Mr and Mrs H don't appear to have questioned it to any great degree in the subsequent years while they continued to be advised by Mackenzie), that wouldn't be surprising. But the small amount of information we do have about performance suggests that in the short period from reinvestment in August 2014 to March 2015 the ISAs and CIA saw an increase in line with the FTSE performance for the same period.

The CMC has also highlighted that the bond featured an annual loyalty bonus if held beyond the initial five years for which an early surrender charge applied and Mackenzie don't appear to have given any consideration to this as a benefit of retaining the bond. But it was a 0.2% bonus in any year where no withdrawal was made – equating in this case to only £300 per year. So, I don't think it was a sufficiently beneficially to influence a decision to encash, not where Mackenzie felt better returns could be achieved in a different type of wrapper with, as it noted, a much wider choice of funds.

But of course, the suitability of a recommendation is about more than performance. Any recommendation needs to be consistent with an investor's circumstances and attitude to risk. And in that respect, while it's not the main focus of the complaint, I don't see any particular issue with what was recommended to Mr and Mrs H for their new ISAs and the CIA.

The chosen funds made up a diversified portfolio that, while quite heavily reliant upon equities, appears consistent with their 'balanced' attitude to risk (comprehensively assessed by way of a proprietary risk assessment tool) and their wider circumstances. They had experience in investing and although Mr H was drawing a workplace pension he was still working, as was Mrs H, and being in their early 50s this was likely to be the case for some time – beyond the medium term for which the investments would've been expected to be held.

In summary, I'm currently of the view that the advice provided by Mackenzie to encash the bond, along with the associated reinvestment advice, was broadly reasonable. And even if I were to find particular issue with the tax liability situation it created, the offer is to my mind a fair and reasonable way of addressing it."

Succession accepted my provisional decision and confirmed it had nothing further it wished to add.

Mr and Mrs H and their CMC didn't accept my decision and provided some further submissions and evidence.

In brief, Mr H voiced concerns with elements of what he felt I'd implied in my provisional findings about his investment experience and apparent subsequent satisfaction with the advice received from Mackenzie. He highlighted that additional deposit-based funds may have been available to him and Mrs H at the time that would've facilitated an alternative to cashing in the bond and he provided some evidence to support this.

Mr and Mrs H's CMC reiterated that they'd have expected to have seen potential alternatives properly documented to show that full consideration had been given to them. And moreover, that Mackenzie's documentation of the process had been inaccurate, particularly in respect of Mr and Mrs H's available savings and work history. The CMC acknowledged the difficulties with determining what alternatives courses of action might have been but highlighted the ongoing positive performance of the bond and its view that ultimately the advice had caused a greater loss than just the tax liability.

What I've decided – and why

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

Having done so, while I recognise that Mr and Mrs H will be disappointed, my conclusions, and reasons for reaching them, remain the same as set out in my provisional decision.

I note Mr H's additional comments and would stress that I didn't intend to imply that he, or Mrs H, had a significant level of investment experience. More that they had been previously advised, so the issues under consideration wouldn't have been entirely new to them. And the documentation from the time suggests a reasonable level of involvement on their part – although, of course, I accept that the recommendations always remained the responsibility of the adviser.

I've noted too the concerns with the general accuracy of the documentation and that the absence of details of deposit savings calls into question the degree to which alternatives were considered. But as the evidence in my view supports the provision of a properly reasoned and considered recommendation by Mackenzie, made in response to Mr and Mrs H's changing circumstances, I don't think a lack of detail around the alternatives is in itself sufficient to find that the advice was wrong.

With regard to the tax liability, as I acknowledged in my provisional decision, managing the bond surrender differently could have reduced the total amount ultimately paid. But as I said, I think the offer already made is a fair and reasonable way of addressing that issue. For clarity, I intended the payment as previously set out by Succession to be paid in resolution of the complaint and make a direction for that to happen below.

My final decision

As noted, Succession has already made an offer to pay Mr and Mrs H £4,395.20, plus interest at 8% simple to date of settlement, and I think that offer represents a fair and reasonable resolution to the complaint in all the circumstances.

So, my decision is that Succession Wealth Management Ltd should now pay that amount to Mr and Mrs H.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Mrs H to accept or reject my decision before 1 March 2024.

James Harris
Ombudsman