

## **The complaint**

The trustees of T, comprised of Mr F and another, complain about Antrams Financial Services LLP, referred to as “*Antrams*” or “*the business*”.

In summary, they say Antrams gave unsuitable investment advice in 2008 when they were advised to invest in an investment bond. They say the advice wasn’t suitable because they had tax implications that they weren’t expecting.

## **What happened**

In December 2001, a trust was created following the death of Mr F’s wife (Mrs F), on terms set out in her Will. It was a discretionary trust, with their children and their offspring named as beneficiaries.

Mr F was (and still is) named as one of the trustees, the other was a senior partner in a firm of solicitors. The second trustee is now someone different.

Mr F says the primary motivations for creating the trust was to ensure financial security for one of their sons (Mr C) who suffers from long term mental illness. The trust would end on his death with any surviving children/grandchildren receiving the benefit.

Mr F also says that it was primarily to be a capital holding fund, making ad hoc payments for things such as holidays and unforeseen needs in life. It wasn’t otherwise created to provide regular income.

I understand that when the trust came into being, its assets were entirely in the property that was owned by Mr F (and Mrs F) and lived in with Mr C. In 2008, when the house was sold the trustees decided to invest their share of the proceeds (£195,000) into assets.

I note that matters were discussed with Antrams over several weeks before the trustees decided to go ahead with the recommendation and invest in the bond to be held in trust.

In 2016, the trustees withdrew £50,000 for two beneficiaries, and in December 2021 after taking further advice from their new adviser, they surrendered the bond. They reinvested the proceeds in conventional funds less the surrender tax liabilities.

Mr F says that the tax on the trust for the year 2021/22 was £94,385 – tax on earlier years was carried forward. He says Antrams is to blame for the type of investment recommended. In other words, the high tax bill has arisen because bond gains are treated as income.

One of our investigators considered the complaint and thought it should be upheld on the basis that the redress offered by the business (in the sum of £13,685.97) to resolve the complaint is fair and reasonable, but that it wasn’t obliged to do anymore. In summary, she made the following points:

- The recommendation was suitable. It met the trust's objective for investment growth and tax efficiency with little or no administration. It was recorded that the trust didn't require an income.
- Full product and suitability documents were provided that made clear the tax treatment of the bond.
- Despite what the trustees say about tax implications, there was a tax liability because of the way the withdrawal was made. At the point of sale, the trustees said they didn't foresee the need for withdrawals.
- The tax treatment for future withdrawals was explained in the information provided.
- The above notwithstanding, Antrams agreed that the £50,000 withdrawal in 2016 should've been executed by way of a "segment assignment". As a consequence, it agreed to refund the difference if this had happened, in the sum of £13,685.97.

There's been much correspondence between the investigator and Mr F raising a number of points, but I don't think I need to repeat them all here. In short, he disagreed with the investigator's view and asked for an ombudsman's decision. In summary, he made the following key points:

- There was no mention of the requirement that the investment had to pay income tax in due course – after 21 years. The adviser was ignorant of this fact.
- The bond isn't tax efficient.
- He doesn't agree that the tax liability has arisen as a result of the withdrawal.
- When he appraised the adviser of the actual need to provide income to the beneficiaries, the adviser suggested using bond withdrawal.
- The documentation referred to by the investigator doesn't make clear the position regarding tax. Under Trust Objectives it only says that:
  - *"To invest in a tax efficient manner and to facilitate tax efficient withdrawals".*
- The footnote in the adviser's letter of August 2008 in which it says *"Withdrawals up to 5% only taxed at the fund underlying rate of 20%"* isn't true. It was 40% and now 45%.
- The adviser was ignorant of how the payment to the two beneficiaries in 2016 could've been avoided by way of bond segment assignment.
- Antrams is probably used to advising individuals who aren't familiar with tax that's why it gave the trustees this poor advice.
- In any case, the trustees didn't need or have specialist trust knowledge, and this shouldn't be held against them.

As no agreement has been reached, the matter has been passed to me for review.

### **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, I agree with the investigator's conclusion for much the same reasons. I'm going to uphold this complaint, on the basis that Antram's offer of redress is broadly fair and reasonable.

However, on the face of the evidence, and on balance, despite what Mr S says, I'm unable to safely say that Antrams gave unsuitable investment advice.

Before I explain further why this is the case, I think it's important for me to note I very much recognise the trustee's strength of feeling about this matter. They have provided detailed submissions to support the complaint, which I've read and considered carefully. However, I

hope they won't take the fact my findings focus on what I consider to be the central issues, and not in as much detail, as a discourtesy.

The purpose of my decision isn't to address every single point raised under a separate subject heading, it's not what I'm required to do in order to reach a decision in this case. My role is to consider the evidence presented by Mr F and Antrams, and reach what I think is an independent, fair, and reasonable decision based on the facts of the case.

In deciding what's fair and reasonable, I must consider the relevant law, regulation, and best industry practice, but unlike a court or tribunal I'm not bound by this. It's for me to decide, based on the information I've been given, what's more likely than not to have happened.

I uphold this complaint on the basis that the redress offered by the business is broadly fair and reasonable, in brief, for the following reasons:

- On the face of the evidence, and on balance, despite what the trustees say I can't safely say that the recommendation to invest in the bond wasn't suitable. I'm persuaded that the recommendation met the trust's objectives and that's why the trustees accepted the recommendation and did so having had a reasonable amount of time to consider their options and make an informed decision.
- I note the trustees sought advice from the business and had no obligation to accept any recommendation, but they did and there was nothing to suggest that they weren't happy with the advice.
- Despite what Mr F now says, on balance I can't say that the recommendation didn't meet their broad objectives to invest for growth, in a tax efficient manner with administrative convenience, and allow some space for ad hoc payments but no regular income for at least 10 years.
- I'm aware that the trust was established in 2001 and the advice was sought in 2008, some seven years later, when the trust would've been a third of the way through its 21-year investment period. I've seen nothing to suggest that this was specifically brought to the adviser's attention, or that it was clear that it was a crucial part of the advice they were seeking rather than simply investing in a bond and placing it in a discretionary trust for purposes that only they're familiar with. In the circumstances the adviser could only rely upon the information provided, and I can't say he's done anything wrong by doing so.
- Despite what Mr F says about the Will, on the face of the evidence and on balance I'm satisfied that the trust was discussed in some detail in terms of how it came about and why. I also note the investment horizon was given as 10 years which would've helped the adviser tailor his advice – I've seen nothing to suggest that the 21 years was mentioned.
- I note the key features document – more likely than not supplied to the trustees at the time – in respect of trusts said *"If your bond is set up under trust, income tax may be paid on gains. The rate of income tax and the person assessed will vary from trust to trust."* It's arguable that this ought reasonably to have prompted further questions from the trustees and/or they ought to have sought clarification if they were unclear about what this might mean. It's arguable that not doing so might suggest that they were aware of this and had no concerns.
- Despite what Mr F says about the FCA principles, I don't agree that the adviser ought reasonably to have known about all the different types of taxes applying to all the different trusts beforehand. Antrams, although advising on some tax issues, isn't a specialist tax adviser. Given the trust set up, for which Antrams had no part to play, the trustees ought reasonably to have raised specific issues/concerns given their responsibilities towards the trust.

- There was no reason why the trustees couldn't make clear to the adviser that the trust was set up such that income couldn't be accumulated after 21 years so the trust had to pay out all the income after that period, therefore this was important to the advice they were seeking – the trustees would've known the trust in detail. I don't think it was necessary for them to have specialist tax knowledge.
- I note one of the two trustees at the time was a senior solicitor and had some trust and/or tax knowledge. But even if they weren't, it's not unreasonable for them to have raised these issues which they would've had knowledge of as trustees.
- On balance I don't agree that the trustees ought to have been volunteered further information regarding the specific tax treatment upon surrender if this wasn't specifically asked for.
- In an email dated January 2023, I note Mr F concedes that he was wrong in stating that the adviser should have provided tax treatment information at the stage of the initial report. However, I'm aware that Mr F also thinks the recommendation should've taken "taxation" into account from the outset.
- I note Mr F concedes that the bond was more convenient than conventional investments, particularly as other investments involved the submission of annual tax returns – bonds generally require less administration for trustees. I can't see how this wouldn't have been welcome for the trustees.
- I note that in 2021 – prior to the 21<sup>st</sup> anniversary of the trust in late 2022 – Mr F asked the bond provider about obtaining income from the bond – presumably he did so for the first time, or else it's likely that a plan of action would've been agreed upon earlier.
- I note Mr F says he thought the funds in which the bond was invested in could be switched to income producing funds, but I've seen nothing to suggest that the trustees were specifically told or led to believe that this would be the case by the adviser.
- I note the bonds can't be income generating investments, which doesn't appear to be out of line with the fact that the bond wasn't created to provide an income.
- Despite what Mr F says about the Trustee Act 2000, it was the trustees that would need to invest in assets that produce an income, but they didn't do that or make clear that's what they wanted or needed to do. In the circumstances, and on balance, I can't blame Antrams for not suggesting (of its own volition) that's what they should've done as trustees.
- This might explain why upon subsequent enquiries, it was suggested by Mr F that the investment would have to be switched out of the insurance bond (albeit requiring its surrender) to an income producing investment.
- In the circumstances it's not unusual that the surrender would create a "chargeable event" with tax implications, this might explain why the adviser suggested periodic withdrawal of funds from the bond to pay to the beneficiaries. I appreciate that this method wasn't without issue as Mr F pointed out in terms of capital withdrawal and those being treated as income for tax purposes. But that's not something that I can blame the business for.
- In the circumstances, and on balance, I can't safely say that the advice to invest in the bond was wrong, given the trust aims and objectives at the time.
- I understand that if the trustees assign policy segments to the beneficiaries, this isn't a chargeable event for the trust and the beneficiaries. I note Mr F says that this will usually mean no tax to pay by basic rate beneficiaries possibly using top slicing. It's not an unreasonable way of avoiding up to 45% tax.
- I note that prior to 2021, all payments have been arranged by the adviser – withdrawals within the 5% allowance such that no tax can be reclaimed, arguably rather than by segment assignment.
- I note that in 2016, the trustees of their own volition, decided to make relatively large payments to two beneficiaries, for reasons that aren't relevant in this case, and

£50,000 was withdrawn. There's no reason why this couldn't have been done via segment assignment. On the face of the evidence, and on balance, I think Antrams ought reasonably to have suggested this as a way of withdrawing funds, but it didn't.

- I appreciate Antrams concedes this point. For the reasons set out above, I can see why the business felt segment assignment should've been recommended, I don't think that this is unreasonable given the tax implications. In the circumstances, and on balance, I think the business's recommendation for redress – based on the tax paid compared to what they would've paid had they been advised about segment assignment – is broadly fair and reasonable.
- I note what Mr F says about inheritance tax (IHT) liability, but I can't say that the trustees wanted advice specifically about IHT or that this was the primary purpose of them seeking investment advice.
- It is inevitable that the gains on the bond would be liable to some tax and therefore they would be much lower – after tax – than what they appear to be pre-tax. I don't think that's an issue that means the advice was unsuitable.
- Even if the bond is taxed at a higher rate than “conventional investments”, this doesn't mean the recommendation is unsuitable based on this observation alone. I note the objective was also for growth, given that this money was invested from the house sale and principally for the benefit of the beneficiaries, who are Mr and Mrs F's children and grandchildren.
- I note Mr F says that the taxation of bond gains is at least twice that of conventional investments. But I've seen nothing to suggest that this was the basis upon which the trustees sought advice. In other words, they wanted the most tax efficient investment come what may.
- On balance, just because there were alternative investment options doesn't mean the recommendation to invest in the bond was unsuitable.

I appreciate that the trustees on behalf of the trust will be thoroughly unhappy that I've reached the same conclusion as the investigator. Furthermore, I realise my decision isn't what they want to hear. Whilst I appreciate their frustration, I can't safely say that the business provided unsuitable advice.

In other words, on the face of the available evidence, and on balance, I uphold this complaint but don't think Antrams needs to do anything other than what it has already offered to do.

### **My final decision**

For the reasons set out above, I uphold this complaint.

I think Antrams Financial Services LLP's offer to pay T £13,685.97 is broadly fair and reasonable and it should pay this amount unless it has done so already.

Under the rules of the Financial Ombudsman Service, I'm required to ask T to accept or reject my decision before 23 November 2023.

Dara Islam  
**Ombudsman**