

The complaint

Mrs S, as trustee, complains on behalf of her father's estate – "S Trust" (name anonymised) – referred to as "*the trust*", about ReAssure Life Limited, referred to as "ReAssure" or "*the business*".

In summary, she's concerned about the deductions made by the business when it paid out the proceeds from a life cover policy. It has also failed to make clear the reasons for this.

What happened

The business didn't uphold the complaint. In summary, it said it did everything that was required and hasn't done anything wrong by deducting tax. It offered the trust £150 compensation for the delays in responding.

One of our investigators considered the complaint but didn't think it should be upheld. In summary, he said:

- He's unable to say that the business did anything wrong with regards to the deduction. He has seen no evidence that the business used inaccurate calculations.
- Our service isn't a forensic accounting service or tax specialist. Based on the information provided, we decide whether or not the business has behaved unreasonably and in this instance he can't say that it has.
- The terms and conditions explain that capital gains tax deduction will be made. They also made clear that the "*amount shall not in any event exceed the amount of tax to which the company will be liable*".
- Where a deduction is made, he'd expect a business to fully explain the reasoning behind this and provide a calculation to support of this.
- Despite her assertions, Mrs S hasn't herself provided evidence as to why the calculation is wrong.
- The business has paid £150 compensation for the delays in responding to the estate which is broadly fair and reasonable.
- In the circumstances, it's not asking the business to do anything differently.

Mrs S disagreed with the investigator's view and asked for an ombudsman's decision. In summary, she said:

- The business hasn't provided calculations to show its own liabilities, so she can't be sure if the deductions have been correct – it's a matter between the business and HM Revenue and Customs. That's why she's not been able to show that the deduction hasn't been more than the tax liability.
- The crux of the issue is:
 - Computation of the amount deducted by the business doesn't allow for reliefs that are applied when determining its tax relief to HMRC.
 - The above fails the test stated in the terms and conditions, namely "*the deduction will be no more than the company's tax liability, unless the company can attest that its tax liability does not enjoy any reliefs against the*

gain.”

- “*no more than*” was a marketing point that the tax liability could be less than the tax on the gain. The business continued to ignore the point about reliefs against the gain.
- In its final response letter, dated 18 November 2022, the business tried to suggest that it was correct the terms and conditions don’t mention reliefs and losses, only the tax chargeable gain. But this is incorrect, the terms and conditions make clear that the deduction from the policy will be no more than the company’s tax liability.
- Just because the business has been generous on the indexation relief does not mean that the “*no more than*” test has been met.
- In terms of the evidence, the business should provide evidence that it has complied with its terms and conditions.
- If the business is obliged to carry out the “*no more than*” test, it should do.
- Given the terms and conditions, the business should have appropriate ways to meet that undertaken.
- Whilst there’s no evidence of what Mrs S’s father was told, tax efficiency of the policy would’ve been a selling point. And an expectation that the relief enjoyed by a business would be passed on to the customer.
- The business hasn’t fulfilled its undertakings given years ago and/or hasn’t got the correct processes in order to make the right assessment.

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 not going to uphold this complaint.

On the face of the evidence, and on balance, despite what Mrs S says, I can’t safely say that the deduction was wrong.

Before I explain why this is the case, I think it’s important for me to recognise the strength of feeling Mrs S has about this matter. She’s provided submissions to support the complaint, which I’ve read and considered carefully. However, I hope she 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, or undertake a forensic analysis of the evidence, it’s not what I’m required to do in order to reach a decision in this case. I appreciate this can be frustrating, but it doesn’t mean I’m not considering the pertinent points in this case.

My role is to consider the evidence presented by Mrs S, and the business, and reach what I think is an independent, fair, and reasonable decision based on the facts of the case – I’m not here to take sides.

In deciding what’s fair and reasonable, I must consider the relevant law, regulation, and best industry practice, but perhaps 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.

- On the face of the evidence, and on balance, I’m unable to safely say that the

deduction has been unwarranted or beyond what the business should deduct. I note Mrs S says she can't prove the business hasn't deducted more than it should because she doesn't have information about the business's own tax liability. But in the circumstances, I don't think the business is obliged to provide that information, and even if it did, I'm not sure it would make much sense to an ordinary person in relation to this case.

- I note Mrs S concedes that the business's *"tax computation would be a complex computation at a total company level. This has always been the case, particularly well before the policy was issued."* That aside, I note Mrs S isn't saying that the business wasn't 'entitled' to deduct tax, just that she's not sure that the correct amount has been deducted. But she hasn't provided any information to demonstrate what the business has wrong. In any case, it's not for me to audit or take apart the calculations in order to work out if the business has done anything wrong. That's not my role.
- Whilst I'm sorry she isn't satisfied by the business's answer, I do think – even without providing information about its own tax liabilities – it has provided an explanation about what it did and why. So, in the circumstances, and on balance, I'm unable to say that the business has done anything wrong.
- I appreciate what Mrs S says about the terms and conditions and why the business is in breach of the specific term in question relating to its own liabilities and reliefs. I understand her point that (in theory) the tax on the liability could be less than the tax on the gain, but I've no reason to say that the business hasn't behaved reasonably in this instance.
- I also appreciate Mrs S says the terms and conditions make clear that the deduction from the policy will be no more than the company's tax liability. Be that as it may, despite her concerns, I've seen no evidence that it was in this instance and therefore I can't say that the business has done anything wrong. Despite what Mrs S says, I'm aware that the business is likely to have been generous with the indexation relief.
- As I mentioned above, I'm aware that other than expressing her concerns, Mrs S also hasn't provided evidence of why the calculation is incorrect. In the circumstances, it's not for us to look through and figure out whether or not the business has done something wrong, in this case in relation to its deduction.

I appreciate Mrs S, on behalf of the trust, will be thoroughly unhappy that I've reached the same conclusion as the investigator, and I realise my decision isn't what it wants to hear.

I note she believes that the business should recalculate the figures and pay some compensation, but I don't agree. Whilst I appreciate her deep frustration and anguish, I'm not going to ask the business to do anything further.

On the face of the available evidence, and on balance, despite what Mrs S says, I'm unable to give the trust what it wants.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S as trustee of the S Trust to accept or reject my decision before 12 September 2023.

Dara Islam
Ombudsman