

The complaint

The complaint concerns advice provided by Bank of Scotland plc (“BoS”) to place a Personal Investment Plan (“PIP”) in trust, preventing Mr M from later accessing the invested money.

What happened

In 2006, prompted by changes in legislation relating to trust arrangements, BoS reviewed Mr M’s existing estate planning. At the time he had two PIPs held in a BoS gift trust, specifically a flexible interest in possession trust. One PIP was a lump sum investment, the other was funded through regular monthly contributions of £300.

Because of the changes to the reporting and tax regimes for the existing trust, BoS recommended that a third PIP be set up to receive the monthly payments in future. This new PIP would be held in a newly arranged bare trust that wouldn’t be affected by the legislative changes, so keeping matters simpler. The applications for the PIP and trust were duly completed and the investment commenced, with Mr M and his wife as trustees and their grown-up children as beneficiaries.

Later, in 2021, Mr M’s circumstances had changed. His wife had sadly passed away, his health had deteriorated, and financial arrangements needed to be made for his care. His children, who by this point held power of attorney for Mr M, approached BoS, but it explained that power of attorney didn’t provide for delegation of trustee duties. As a result, Mr M was removed as a trustee, replaced by his children.

A complaint was then made to BoS concerning the suitability of the 2006 advice. In short, it was felt that the ongoing £300 monthly payments shouldn’t have been committed to the PIP in the bare trust, but instead retained for Mr M’s benefit so the money would’ve been available to him to help fund his care. Concerns were also raised that Mr M’s children hadn’t been made aware of their interest in the bare trust and the potential tax liabilities.

BoS didn’t uphold the complaint. It felt the advice had been suitable given Mr M’s circumstances at the time and that the rationale behind it had been fully explained in the financial report issued to him. It noted that the report had explained the tax implications and highlighted that the beneficiaries should be notified of their interests under the trust.

The complaint was referred to this service, but our investigator reached broadly the same conclusion as BoS. He was satisfied the recommendation of a bare trust had been reasonable and, in noting concerns raised that this particular type of trust was typically used when the beneficiaries were minors, explained that there were nevertheless no restrictions relating to the ages of beneficiaries. More generally, he was satisfied that Mr M’s potential inheritance tax liability had been correctly identified given the rates and legislation at the time and that it was noted Mr M had not wanted access to the money committed to the investment.

The investigator explained that Mr M’s children had been made the lives assured for the PIP to provide flexibility of surrender, so the investment wouldn’t automatically close when Mr M passed away. He felt that the tax position had been set out in the financial report and that it

had been noted that the beneficiaries should be informed, and that it was ultimately the responsibility of the trustees to do so and manage other aspects of the trust arrangement.

The investigator's opinion wasn't accepted. Concerns remained that Mr M hadn't been aware of the consequences of the PIP being placed in the trust and that BoS had provided conflicting information. The investigator obtained some clarification from BoS that the money in the PIP belonged to the beneficiaries (who, as noted, were also by this point the trustees) and that it could be withdrawn by them at any time by contacting BoS.

Ultimately though, no agreement could be reached, so the matter was referred to me to 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've reached the same conclusion as the investigator and for broadly the same reasons. I don't think the complaint should be upheld.

I appreciate the complaint has come about because of the need to provide care for Mr M and acknowledge that this will have been a difficult time for Mr M's family. But I must look at what happened at the time of the advice, in 2006, and judge the actions of the adviser on the circumstances then.

And in that respect, it strikes me that the recommendation to create the new trust, unencumbered by the new requirements that the new legislation would create, was a reasonable and suitable one for Mr M's circumstances at that time.

The investment itself – the monthly payments made to the new PIP – was effectively just a continuation of what was already in place, with no deviation in the level of risk involved. So, the crux of the matter is really whether it was reasonable at that time to put the investment in trust, in such a way that the money would no longer be available for Mr M to use.

It's clear from the 2006 financial report that estate planning was the sole objective for Mr M and that this particular advice was an extension of plans already made, prompted by changes to the rules. His inheritance tax liability appears to have been correctly determined and while I note that the legislation around nil-rate bands changed the following year, potentially meaning there'd no longer be any liability, that's not something that the adviser would've been aware of at the time, so he'd only have been able to advise in the context of what the current rules were.

I think, on balance, it's more likely than not that Mr M was aware of what the recommendation involved and its consequences and was happy to proceed with it. BoS has supplied some additional notes relating to Mr M's communications with it in the years following the advice. These describe changes in his circumstances such as him receiving an inheritance in 2009 and dealing with trust issues relating to it, and also giving some thought to how it might impact his own current trust and the monthly payments to the PIP.

I should stress that without this additional information I would in any event be satisfied the advice was suitable and the complaint should not be upheld. But I mention it to provide some context and hopefully make my rationale for finding that the advice was reasonable and understood at the time a little clearer.

I appreciate that Mr M's children may not have been made fully aware of the circumstances

of the investment and trust. But keeping them informed was ultimately the responsibility of Mr M as trustee and not BoS. The financial report did explain that it would 'be prudent' to let them know, which I appreciate could've been a bit more explicit. But I nevertheless think that sufficient information was provided to explain the advice and what should be done going forward.

My final decision

For the reasons given, my final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 21 November 2023.

James Harris
Ombudsman