

The complaint

Mr and Mrs D complain about the advice they received from The National Farmers' Union Mutual Insurance Society Limited (NFU) to invest in a bond. They are unhappy that they are unable to assign segments of the bond to their daughters as they had intended. They say the advice given to them was unsuitable to meet their needs for a flexible arrangement.

What happened

In March 2015, NFU recommended Mr and Mrs D invest £100,000 into a Flexibond. Three subsequent top-ups were made to the investment in October 2015 (£100,000), March 2017 (£100,000) and April 2018 (£960,000), all following further advice from NFU.

In December 2022, Mr and Mrs D raised a complaint with NFU after they incurred problems when trying to release funds from the investment for one of their daughters. They said the bond wasn't suitable for them as they didn't have the flexibility they needed to make changes and specifically assign segments of the bond. They said they weren't informed of this inflexibility in 2018, and had they been, they would have invested their funds differently.

NFU responded but didn't uphold the complaint. In summary it said:

- During each of the financial reviews it conducted between 2015 and 2018 it was noted that Mr and Mrs D didn't want to take inheritance tax planning into account when planning their investments – but the adviser recommended this should be reviewed at their earliest opportunity.
- It has no record of a stated requirement to be able to assign or put individual segments of the bond into trust. The bond isn't designed to allow part assignment to different owners, or to be put partially into trust. The bond has individual segments only to minimise any chargeable gain that arises as a result of a payment being taken from the plan.
- The key features document issued at the time confirms ownership can be transferred to another person or company, but does not indicate part of the bond can be transferred.

Mr and Mrs D didn't agree with this conclusion, so referred their complaint to this service for an independent review. One of our investigators looked into the complaint. He also didn't uphold it. In summary he said:

- NFU informed Mr and Mrs D they should review their inheritance tax mitigation.
- He thought NFU had adequately explained the features of the policy.
- He didn't find Mr and Mrs D had an objective at the time of the initial sale to invest funds for their children or any suggestion they wanted to assign the bond to them in the future.
- He noted in the most recent advice in 2018, there was a specific objective to present funds to their children, but this wasn't in relation to allocating the funds in the bond fund to them at that time or in the future.
- He acknowledged the reference Mr and Mrs D make to wanting to assign some of the segments that make up the investment but didn't find that NFU told them they could do this. He noted the Key Information Document stated "You can transfer

ownership of the policy to another person or company” - but doesn’t say anything about assigning or putting individual segments into trust.

Mr and Mrs D didn’t agree with the assessment. Their representative provided further arguments. In summary they said:

- The Association of British Insurers (ABI) guidance on “Cluster Policies – Good Practice for Providers” sets out that policyholders should have the option to fully surrender segments or withdraw across the bond as a whole. So, having a product that doesn’t allow for this choice isn’t fair and reasonable. The most tax efficient surrender method depends on the investor’s individual circumstances and shouldn’t be dictated by the provider.
- The suitability report refers to the ability to invest in a “*tax-deferred environment so that you can decide the level of tax paid on any gains, also the ability to assign proceeds to a lower rate tax payer and to place the bond into trust in the future.*” The Flexibond has limitations with regard to these objectives which weren’t fully explained.
- Mr and Mrs D have relatives who have a complaint about the same product with similar concerns. The initial decision on this was to uphold the complaint. They see their complaint as fundamentally the same.

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.

At the outset I think it would be helpful to explain that I’m only considering the advice Mr and Mrs D received to invest in bond in 2015, and also the subsequent top ups. So, I will be reaching a decision on whether the bond, and the subsequent top ups were mis-sold. I’m not considering any events or actions that have occurred subsequent to the sales. If Mr and Mrs D do have concerns about the management of the bond (including surrender issues) these will need to be raised separately with NFU.

Mr and Mrs D’s complaint concerns the sale of a bond and whether it gave them the flexibility they required. The concerns are specifically the inability to assign segments of the investment and consequential implications of not being able to do this. While they haven’t raised specific concerns about the broader suitability of the underlying investment, I have considered this as part of my overall findings on the suitability of the advice. Their attitude to risk was assessed alongside their capacity for loss, taking into account their wider circumstances. The bond recommended (and the top-ups) were suitable for their recorded need for capital growth. They don’t appear to have had a specified requirement for future access to the funds over the short term, so the product was suitable over the medium to long term. This is all supported by the information that is recorded in the point of sale documentation NFU has provided.

The key issue in dispute relates to Mr and Mrs D’s understanding that they would be able to assign segments of the bond to their daughters or put them into a trust. I’ve reviewed the available evidence from the initial sale and the subsequent advice to make the top-ups to see what was discussed about this.

When the bond was taken out, I can see from the recommendations letter Mr and Mrs D’s main objective was for capital growth over the longer term (10 years+). I haven’t seen anything to suggest they had a clear plan to gift segments of the bond or put it in trust. There is a reference to taxation and specific risks warnings on this. I note there’s a warning regarding tax status and the potential for additional income tax charges when the investment

is surrendered. There is also a reference to considering taking regular withdrawals at some point in the future, but nothing specific to assigning segments of the bond.

The sales paperwork for the later 2015 and 2017 increments into the bond contain similar information. But there is an additional reference to Inheritance tax (IHT) that says Mr and Mrs D don't wish to take this into account when planning for investments. There is a note from the advisor that explained their beneficiaries could be facing a very large IHT bill. In the 2017 recommendations letter further information is given about why the bond meets Mr and Mrs D's specific objectives – this includes commentary on the ability to invest in a tax-deferred environment so they can decide the level of tax paid on any gains by structuring withdrawals to suit (but with no plans to take any). It also reference the ability to assign proceeds to a lower rate taxpayer and to place into trust in the future if they identify they don't want the proceeds themselves.

The 2018 point of sale paperwork reaffirms the objective for growth over the longer term. It also repeats the reasons to support the recommendation about deferring tax, assigning the proceeds to a lower rate taxpayer and placing the investment into trust. It again notes that there are no plans for a few years to withdraw anything from the bond. There is also no mention of a requirement or objective to assign segments or gifting parts of the investment to Mr and Mrs D's children.

I've also reviewed the Key Features Document and Policy Document that was provided by NFU to explain the workings of the bond. These cover the main features of the investment and the terms and conditions. There is information about the flexibility of the product, withdrawals and details that the investment can be assigned. It also covers the tax implications of making withdrawals and transferring the bond to another person. But I haven't seen anything that says segments could be assigned.

While I accept that it does seem likely Mr and Mrs D wanted flexibility with their investment, it doesn't seem there was an overriding objective for segments of the investment to be assigned to their daughters at particular time. The bond they were recommended did allow them some flexibility with regards to withdrawals, surrender and assignment, so I'm satisfied flexibility was taken into account as part of the advice.

I have noted the comments made by Mr and Mrs D's representatives including those about the ABI guidance on cluster policies – including the point about the most tax efficient surrender method depends on the investor's individual circumstances and shouldn't be dictated by the provider. I also note the reference to relatives of Mr and Mrs D having a complaint about the same product with similar concerns upheld.

Firstly, each complaint is considered on its own individual merits. So, my considerations of Mr and Mrs D's complaint are specific to them and the evidence available in relation to it. It isn't clear from what I've seen whether Mr and Mrs D have gone on to surrender their bond and incurred a tax liability. If Mr and Mrs D have surrendered their investment or are still considering this and have concerns about how this has/will be actioned, they should contact NFU in the first instance about this. I don't consider this relates to the complaint I'm considering about the suitability of the original recommendations

Overall, I haven't found reason to uphold this complaint. I'm satisfied the initial investment and subsequent top-ups met Mr and Mrs D's needs and recorded objectives that were established through the advice process. It is possible with the benefit of hindsight that investing in an alternative product could have met those objectives and potentially allowed them more flexibility with regards to their tax liabilities. But I don't think this means the original advice must have been unsuitable. In conclusion, I've not been persuaded that the complaint should be upheld, so I don't find that NFU needs to do anything further.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs D to accept or reject my decision before 12 January 2024.

Daniel Little
Ombudsman