



Financial Services Ombudsman Scheme

Summary of the determination issued 27 November 2017 in respect of a claim for financial loss due to incorrect information having been given by a Supplier.

Summary of complaint

In May 2002 the Complainants completed an instruction to assign a Bond held in the name of their company to themselves as individuals. At the time the Supplier forwarded to the Complainants a Notice of Absolute Assignment. Within this notice the Supplier advised *"unless you contact us to advise us otherwise, we assume that the assignment is by way of a gift rather than for monetary value"*. The Complainant's independent financial adviser ('IFA') responded on behalf of their clients to advise that the assignment was not a gift but had effectively been sold to the Complainants for £182,851.50, this being the value of the Bond at the time of the assignment.

A period of fourteen years passed during which time the Complainants appointed a new IFA. In August 2016 this IFA contacted the Supplier on behalf of their clients and asked what the chargeable event amount was when the assignment took place in 2002. In response the Supplier advised that no chargeable event had occurred. The following day the IFA wrote to the Supplier to obtain further clarity. In their response the Supplier stated that the assignment had been completed as a "gift", rather than "for monies worth" and there was therefore no chargeable gain on the assignment.

In light of this information the Complainants encashed the Bond in full.

Upon receiving a chargeable event certificate at a later date, it came to light that the Complainants were looking at a chargeable gain of £148,071.60 rather than the £80,923.10 which they were expecting, and based on the additional gain, the Complainants would have to pay additional tax totalling £20,444.40. The IFA queried this with the Supplier who responded that the policy had in fact been assigned to the Complainant for "monies worth."

The IFA, made a formal complaint to the Supplier, arguing that had they been given the correct advice from the outset (that the Bond was in fact for "monies worth") then the Complainants would have structured the encashment over a number of years to ensure the tax paid on the gain could be managed in accordance with their tax position at the time. They considered the Supplier was responsible for the additional tax suffered by the Complainants as a result of the incorrect information provided and they requested that the Supplier fully reimburse the Complainants.

The Supplier acknowledged that they had provided incorrect advice. The Supplier added however that the Complainants would have been aware that the assignment has been for monies worth based on the fact that they were directors of the assigning company as well as the assignees. Furthermore the Supplier made reference to the letters issued in 2002 by the Complainants previous IFA who had confirmed that the Bond

had not been assigned as a gift. The Supplier offered the Complainants £10,000 in recognition of having given incorrect advice but would not accept full liability for the above reasons.

How do the Complainants want the Supplier to put the Matter right?

The Complainants brought a complaint to the Scheme in which they claimed £20,444.40, this being the amount of their additional tax liability.

Relevant Law

The basis of the Complaint is a question of negligence and in particular that the standard of care for a financial services professional is that expected of the reasonable competent practitioner of that profession.

The Supplier is a regulated financial entity and as such owed a duty of care to its customer, the Complainants, to provide correct information in respect of their investments. It is reasonable, in the circumstances to expect that the Supplier would provide information to their customer which was accurate. In failing on two occasions to provide accurate information to the Complainants' IFA in 2016, the Supplier breached its duty of care to the Complainants. As a result of the inaccurate information, the Complainants have potentially incurred a higher tax liability than they would have done had the correct information been provided and the IFA been able to advise the Complainants as to how to mitigate the liability (by staging the encashment of the Bond). The Supplier would have been aware of the potential of adverse tax consequences arising from the provision of inaccurate information.

The question then arises as to whether or not the plaintiffs (in this matter the Complainants) in any way contributed to their loss, in other words was there contributory negligence?

Findings

The Supplier has admitted its error and apologised for it.

The Adjudicator requested, as an addition to the information already supplied by the parties, a copy of the financial statements for the company for the year ended 31st March 2003. These were supplied within seven days of the request being made suggesting that the information was readily available to the Complainants and to their IFA. An analysis of these accounts clearly shows that the Bond was sold for £182,851 at some time between 1st April 2002 and 31st March 2003. The Adjudicator therefore dismissed the argument put by the Complainants that they could not be expected to remember what happened fourteen years ago and accordingly found that they are partially responsible for their loss. Both were directors of the company and would have had full knowledge of its affairs and had access to its financial information.

Award

It was found that the Supplier fell short of the standard of care due by a regulated financial services entity to its client. However for the reasons stated above the Complainants were found to have contributed to their loss.

The Supplier was therefore ordered to pay the Complainants the sum of £10,000