

## The complaint

Mr B has complained about the advice he was given by St Paul's Marketing Limited (an Appointed Representative of Alexander David Securities Limited) to transfer his pension to a self-invested personal pension (SIPP) and invest in an unsuitable investment.

## What happened

I issued my provisional decision on this complaint on 7 October 2020. The background and circumstances of the case and the reasons why I was minded to uphold it were set out in that decision. I have reproduced the provisional decision here.

*The background to the complaint was set out by the investigator in his assessment. He explained Mr B had said he was cold called and offered a pension review by representatives of St Pauls Marketing, which he accepted.*

*Mr B was employed earning about £33,000 a year. He had no other savings and investments and considered himself a low to medium risk investor.*

*Mr B had two personal pensions. He signed an execution only letter on 3 February 2016 instructing his SIPP administrator to buy debentures in Just Bridging Loans PLC (Just Loans). An account with a discretionary fund manager (DFM) was opened on 3 February 2016. Two transfer values of £34,883 and £17,414 were transferred to the SIPP in February and March 2016 respectively. £34,073 was invested in Just Loan debentures in February 2016 and £17,324 in March 2016.*

*Mr B, through his representative, complained to Alexander David in May 2019. I understand Alexander David didn't acknowledge or respond to the complaint. The representative subsequently referred the complaint to us.*

*One of our investigators asked Alexander David for its files and to provide any other evidence it wanted us to take into account. Despite reminders, no further evidence or arguments were provided. The investigator therefore assessed the complaint on the evidence that had been presented.*

*The investigator said the evidence suggested that St Pauls Marketing had conversations with Mr B about his pension and given his background he thought it unlikely Mr B would have sought out this type of investment on his own volition. He noted St Paul's letter to Mr B dated 9 December 2015 was sent as a follow up to an earlier conversation and cites an offer for the debentures. The investigator thought the circumstances suggested St Pauls discussed the existing pensions and compared them with the debentures they were promoting. He said he thought it likely St Pauls advised the debentures were likely to perform better. The investigator thought St Pauls had personally recommended Mr B to transfer his pensions. He didn't think someone in Mr B's position and background would likely act on an execution only basis. And he didn't think the investments were suitable for Mr B in all the circumstances.*

*The investigator said that as St Pauls was arranging the transaction it was required to carry*

out an appropriateness test in accordance with the Financial Conduct Authority's (FCA) Conduct of Business rules (COBS 10). He said St Pauls had failed to assess appropriateness and disregarded Mr B's prior knowledge and experience in favour of encouraging him to transfer his pension.

The investigator thought that the complaint should be upheld. He sent his assessment of it to Alexander David. However it didn't provide a response. The investigator subsequently wrote to both parties on 7 September 2020 explaining that the complaint would be passed to an ombudsman for review and to make a final decision. No further evidence or arguments have been provided.

### **What I've provisionally 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.*

*Alexander David didn't respond to Mr B's original complaint. Neither did it co-operate with our investigation. There's only very limited evidence available to establish what happened at the time of the transaction.*

*I've carefully considered the evidence that is available including Mr B's recollection of events. Alexander David hasn't disputed what Mr B said in his complaint to it, or what the investigator said in his assessment.*

*I'm also mindful that this is one of a number of complaints we have received and which I have seen against St Pauls Marketing Limited; all of a similar nature, involving seemingly similar circumstances and the same investments.*

*I need to consider each complaint on its own facts and the evidence provided in each particular case. But I've noted that what Mr B has said about St Pauls' role is consistent with what other complainants have described. So I think what he has said is plausible. And taking everything into account, I have found it credible.*

*Mr B completed a complaint form for us a copy of which was sent to Alexander David. In it he said he had received a cold call from St Pauls Marketing, and from this he sent some documentation off for a pension review. He had two face to face meetings to discuss his pensions further. He was told that due to his pensions being frozen his funds would be better off if he transferred to a SIPP. He said the adviser told him he would get a fixed return of 8.75% and that believing the investment had guaranteed returns he thought it was too good to turn down.*

*I'm satisfied, on the balance of the evidence that is available that St Pauls Marketing was involved from the outset. Mr B subsequently transferred his pension to the SIPP and invested in the debentures. In my experience, it's unusual for someone of Mr B's background and experience to want to transfer an existing pension in order to invest in this type of investment without prompting. I think it was unlikely to have happened without the involvement of St Pauls. I'm satisfied that it initiated the transfer and investment in the debenture and this wasn't a genuine execution only transaction. St Pauls was aware of where the investment was going to be made and facilitated it.*

*Mr B's representative complained to St Pauls alleging that the recommendation to transfer Mr B's existing pensions to the SIPP and invest in the DFM was unsuitable. Mr B has said St Pauls advised him to transfer and invest in the debentures. The firm hasn't disputed this. In all the circumstances and on the balance of the limited evidence that is available, I think it's more likely than not that advice was given.*

*The investigator also said he thought St Pauls was involved in arranging the transaction and that it was required, but failed, to assess its appropriateness in accordance COBS 10. He didn't think the debentures were appropriate for Mr B.*

*Again, St Pauls hasn't disputed this. I agree with the investigator that it's more likely than not that St Pauls arranged the investment. It was the promoter for the debentures, but I'm satisfied, on the limited evidence available, that it went beyond just promoting them and was involved in arranging the investment (and recommending it). The debentures were high risk and speculative and clearly weren't appropriate for Mr B given his background, knowledge and circumstances.*

*I think it was clear that the debentures weren't suitable or appropriate for Mr B and this should have been clear to St Pauls.*

*I also don't think the firm acted in Mr B's interests as required by the regulator's Principles. I'm satisfied that if St Pauls hadn't advised Mr B to transfer and invest in the debentures or if it had told him it wasn't appropriate for him he wouldn't have transferred and invested in them.*

*Accordingly, I'm satisfied that St Pauls' failures caused Mr B to transfer and invest in a product that he would otherwise not have invested into. It follows that I'm satisfied its failures caused the losses that Mr B has claimed.*

### ***My provisional decision***

*My provisional decision is that I uphold Mr B's complaint. I intend to order Alexander David Securities Limited to calculate and pay compensation to Mr B on the following basis.*

### ***fair compensation***

*In assessing what would be fair compensation, my aim is to put Mr B as close as possible to the position he would probably now be in if he had been given suitable advice. I don't think he would have transferred, but I think Mr B would have invested differently. It's not possible to say precisely what he would have done, but I am satisfied that what I have set out below is fair and reasonable given Mr B's circumstances and objectives when he invested.*

### ***what should Alexander David do?***

*To compensate Mr B fairly Alexander David should:*

- Compare the performance of Mr B's investment with that of the benchmark shown below. If the fair value is greater than the actual value, there is a loss and compensation is payable. If the actual value is greater than the fair value, no compensation is payable.*
- Alexander David Securities Ltd should also pay any interest set out below.*

*If there is a loss, Alexander David Securities Ltd should pay into Mr B's pension plan to increase its value by the amount of the compensation and any interest. The payment should allow for the effect of charges and any available tax relief. Alexander David Securities Ltd shouldn't pay the compensation into the pension plan if it would conflict with any existing protection or allowance.*

*If Alexander David Securities Ltd is unable to pay the compensation into Mr B's pension*

*plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the compensation should be reduced to notionally allow for any income tax that would otherwise have been paid. The notional allowance should be calculated using Mr B's actual or expected marginal rate of tax at his selected retirement age.*

*I think Mr B is likely to be a basic rate taxpayer at his selected retirement age, so the reduction should equal the current basic rate of tax. However, if Mr B would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation.*

investment name	status	Benchmark	from ("start date")	to ("end date")	additional interest
SIPP	still exists	for half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	Date of transfer	Date of decision	8% simple a year from date of decision to date of settlement if settlement isn't made within 28 days of Alexander David being notified of Mr B's acceptance of this decision

*In addition, Alexander David should:*

- Pay Mr B £250 for the distress and inconvenience the disruption to his retirement planning has caused.*
- Provide details of the calculation to Mr B in a clear, simple format.*
- Income tax may be payable on any interest paid. If Alexander David Securities Ltd considers that it is required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr B how much it has taken off. It should also give Mr B a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.*

### **Actual value**

*This means the actual transfer value of the SIPP at the end date.*

*If, at the end date, the debenture is illiquid (meaning it cannot be readily sold on the open market), it may be difficult to find the actual value of the SIPP. So, the value should be assumed to be nil to arrive at fair compensation. Alexander David Securities Ltd should take ownership of the illiquid investment by paying a commercial value acceptable to the pension provider / administrator. This amount should be deducted from the compensation and the*

*balance paid as above.*

*If Alexander David Securities Ltd is unable to purchase the investment its value should be assumed to be nil for the purpose of calculation.*

*Alexander David Securities Ltd may wish to require that Mr B provides an undertaking to pay it any amount he may receive from the investment in the future. That undertaking must allow for any tax and charges that would be incurred on drawing or receipt from the pension plan. Alexander David Securities Ltd will need to meet any costs in drawing up the undertaking.*

### **Fair value**

*This is what the sum transferred from the pension provider, plus any charges incurred within the plan on transfer, would have been worth at the end date had they grown in line with the benchmark.*

*To arrive at the fair value when using the fixed rate bonds as the benchmark, Alexander David Securities Ltd should use the monthly average rate for the fixed rate bonds with 12 to 17 months maturity as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.*

*Any additional sum paid into the SIPP should be added to the fair value calculation from the point in time when it was actually paid in.*

*Any withdrawal, income or other distribution out of the SIPP should be deducted from the fair value at the point it was actually paid so it ceases to accrue any return in the calculation from that point on.*

*The investigator recommended that Alexander David pay Mr B £500 plus VAT towards financial advice fees to transfer out of the SIPP plus any penalties he might incur. However the fair value takes into account any penalties. And the benchmark provides a fair value irrespective of the charges/advice fees deducted as part of the transaction. Given Mr B's existing funds were invested at a higher level of risk than was appropriate for him he would have always had to incur advice fees if he wanted advice on alternative funds. So I'm not currently minded to award the £500 plus VAT or any additional award for the penalties incurred on transferring out, as I think the compensation already takes those factors into account.*

### **SIPP Fees**

*The investigator recommended that Alexander David pay five years' worth of SIPP fees if it couldn't buy the investment. I think this is reasonable as Mr B hasn't got the opportunity to close the SIPP if the illiquid debenture remains in it. So if Alexander David Securities Ltd can't buy the investment and it remains illiquid, it should pay Mr B an amount equal to five years of SIPP fees based on the current tariff. This is in addition to the compensation calculated using a nil value for the investment.*

### **Why is this remedy suitable?**

*Mr B and his representative have said he was a low and low to medium risk investor. In the circumstances, I don't think Mr B would have transferred with suitable advice. But his existing funds were invested in funds that presented a higher degree of risk than was suitable. So I think he would have switched funds with his existing providers if he'd been given appropriate advice. It's not possible to say exactly how he would have invested, so I*

*think the index outlined above is an appropriate benchmark and is a reasonable proxy for the level of risk that Mr B was willing and able to take.*

- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to their capital.*
- The FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's a fair measure for someone who was prepared to take some risk to get a higher return.*
- I consider that Mr B's risk profile was in between, in the sense that he was prepared to take a small level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mr B into that position. It does not mean that Mr B would have invested 50% of his money in a fixed rate bond and 50% in some kind of index tracker investment. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr B could have obtained from investments suited to his objective and risk attitude.*

I asked both parties to send me any further evidence or arguments that they wanted me to consider.

Alexander David Securities Limited didn't provide any further evidence or arguments. Mr B's representative confirmed he had nothing further to add.

### **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 seen no reason to depart from the findings set out in my provisional decision to uphold the complaint.

### **My final decision**

For the reasons set out in my provisional decision, my final decision is that I uphold Mr B's complaint.

I order Alexander David Securities Limited to calculate and pay compensation to Mr B as set out in my provisional decision above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 20 November 2020.

David Ashley  
**Ombudsman**