

The complaint

Mr S has complained about the advice he was given by St Pauls Marketing Limited (an Appointed Representative of Alexander David Securities Limited) to switch his pension to a SIPP (Self Invested Personal Pension) and invest in an unsuitable investment.

What happened

Mr S, through his representative, complained to Alexander David Securities Limited in February 2020. I understand Alexander David didn't acknowledge or respond to the complaint. The representative subsequently referred it to us and it was passed to one of our investigators to consider.

The investigator asked Alexander David for its files and to provide any other evidence it wanted us to take into account. However no files or evidence or arguments were received. The investigator therefore sent her assessment of the complaint to both parties based on the evidence that was available.

The investigator said she had spoken to Mr S who told her that he had been cold called by St Pauls Marketing in 2016 and offered a pension review. She said at the time he was in his early fifties and he had a personal pension valued at £15,212. Mr S had said he remembered receiving a number of phone calls about his pension and was persuaded to transfer it. He'd said he was not an experienced investor and at the time understood this was his only pension provision and he had no other investments – albeit he had discovered he'd got another pension in 2021.

The investigator said she understood Mr S would've been provided with promotional material relating to an investment in debentures issued by Just Loans. Mr S had said he remembered being told that he could achieve £3,000-£4,000 in growth within three years.

A SIPP was set up in February 2016 and £14,750.50 was transferred to it. The investigator said she understood a stockbroking account was then set up and the money in the SIPP invested in the Just Loan debentures.

The investigator said she thought from the information that had been provided that it was likely that St Pauls Marketing had recommended the investment to Mr S, providing him with all the information about the debentures and the benefits of transferring his existing pension to the SIPP. Mr S had said he didn't meet anyone face to face, and everything relating to the transfer was discussed over the telephone. She said given Mr S was inexperienced with matters relating to pensions and investments, she thought St Pauls Marketing had persuaded him to transfer during the calls it had with him. She said that as she thought St Pauls Marketing had advised Mr S on the investment, she'd considered whether it was suitable for his circumstances.

The investigator said Mr S was in his early 50s, and at the time believed this was his only pension provision that he would rely on in retirement. He had no other investments or previous experience of investing apart from his pension. She said he was a low risk investor who couldn't afford any loss in the value of his funds. The investigator said investing his

pension in a new and untested business lacked diversification, was 'high risk', and was an unusual retirement investment strategy. She thought it was clearly unsuitable in Mr S' circumstances.

Taking this into account, she said investing the pension fund into high risk bonds wasn't in line with Mr S' objectives at the time. And an adviser providing a recommendation in the best interests of their client should have identified this. She said Mr S had no investment experience or capacity for loss, so wasn't the type of investor the investment was suitable for.

The investigator said that St Pauls Marketing had arranged the investment and in the circumstances of it COBS (Conduct of Business Sourcebook) rule 10.2.1 applied. This said, in summary, that when providing a service to which the chapter applied, a firm must ask the client to provide information regarding his knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded so as to enable the firm to assess whether the service or product envisaged was appropriate for the client. It went on to say that when assessing appropriateness, a firm *"must determine whether the client has the necessary experience and knowledge in order to understand the risks involved in relation to the product or service offered or demanded."*

The investigator said that on other similar cases she had seen, St Pauls Marketing had said it wasn't responsible for the action taken by the consumers. However she thought that but for St Pauls Marketing's involvement, which wasn't just limited to promotion, it was unlikely that the consumers would have gone ahead with the investment.

The investigator referred to the Regulator's Principles for Business which she said firms had to follow. These said that a firm must conduct its business with due skill, care and diligence; pay due regard to the interests of its customers and treat them fairly; manage conflicts of interest fairly, both between itself and its customers and between a customer and another client, and take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who was entitled to rely upon its judgment.

The investigator didn't think St Pauls Marketing had followed these Principles. She said if it had done so St Pauls Marketing wouldn't have recommended the investment to Mr S. And as a result of St Pauls Marketing's involvement, Mr S had been disadvantaged. The investigator went on to set out how she thought St Pauls Marketing should calculate and pay Mr S fair compensation.

The investigator sent her assessment of the complaint to Alexander David on 12 November 2021. However it didn't provide a response. The investigator e-mailed both parties on 26 November 2021 explaining that the complaint would be passed to an ombudsman to review and make a final decision.

Alexander David didn't respond.

Mr S' representative said it had provided all the information it held.

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 come to the same conclusions as the investigator and for largely the same reasons.

Alexander David didn't respond to Mr S' original complaint or to the investigator's requests for information. So there's only very limited evidence available to establish what happened at the time of the transfer and investment.

I've carefully considered the evidence that is available, including Mr S' recollections of events. The investigator set out her thoughts on the matter in her assessment, and Alexander David hasn't disputed what she said or provided any further evidence or arguments.

I think it's clear that following St Pauls Marketing involvement and input Mr S transferred his pension to the SIPP and invested in the debentures. In my experience it's unusual for someone of Mr 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 Marketing. On the balance of the evidence provided, I'm satisfied that it initiated the transfer and investment in the debentures. It was aware of where the investment was going to be made and facilitated it.

The investigator said she thought from the information that had been provided that it was likely that St Pauls Marketing had recommended the investment to Mr S. She also thought the debentures were unsuitable for the reasons I outlined above. And the firm hasn't disputed this. I note that when Mr S complained to Alexander David through his representative in February 2020 they said Mr S had no previous investment experience and no knowledge of the financial markets or pensions. And at the time of the advice he had a low capacity for loss and low attitude to risk. Alexander David didn't respond to this complaint either.

In all the circumstances and on the balance of the limited evidence that is available, like the investigator, I think it's more likely than not that St Pauls Marketing did advise Mr S to transfer and invest in the debentures. And given the significant risks presented by the investment, I don't think it was suitable for Mr S in his circumstances, particularly given he has said that he was a low risk taker, with no investment experience, and no other savings and investments.

However, even if St Pauls Marketing didn't give advice to Mr S, on the balance of the evidence, I think it's likely it was involved in arranging the transaction. The debentures were a non-readily realisable security and in the circumstances COBS 10 required St Pauls Marketing to assess Mr S' *'knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded'* so that it could assess whether the debentures were appropriate for him.

Mr S said he had little investment experience. I've seen no evidence to suggest this wasn't the case. And Alexander David hasn't disputed this. The debentures presented significant risks. In my view they weren't appropriate for Mr S given his knowledge and experience and this should have been clear to St Pauls Marketing.

I also don't think the firm met its obligations under the regulator's Principles for Business; it failed to act in Mr S' best interests by not ensuring the investment was appropriate for Mr S. And it failed to ensure the suitability of its advice, which I think Mr S was entitled to rely on.

Taking all the circumstances of the transaction into account, I think it was clear that the debentures weren't suitable or appropriate for Mr S. I'm satisfied that if St Pauls Marketing hadn't advised Mr S to transfer and invest in the debentures, or if it had told him they weren't suitable or appropriate for him, he wouldn't have transferred and invested in them.

Accordingly, I'm satisfied that St Pauls Marketing's failures caused Mr S to transfer and

invest in a product that he would otherwise not have invested into. I'm satisfied its failures caused the losses that Mr S has claimed.

Putting things right

Fair compensation

In assessing what would be fair compensation, my aim is to put Mr S as close as possible to the position that he would probably now be in but for the firm's failings. I think Mr S would have invested differently. It is 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 S' circumstances and objectives when he invested.

What should Alexander David do?

To compensate Mr S fairly Alexander David Securities Limited should compare the performance of Mr 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 Limited should also pay any interest as set out below.

If there is a loss, Alexander David Securities Limited should pay into Mr 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 Limited shouldn't pay the compensation into the pension plan if it would conflict with any existing protection or allowance.

If Alexander David Securities Limited is unable to pay the compensation into Mr 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 S' actual or expected marginal rate of tax at his selected retirement age.

I think Mr S 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 S would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation.

In addition, Alexander David should:

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

investment name	status	Benchmark	from ("start date")	to ("end date")	<u>additional interest</u>
SIPP	closed	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 closure	8% simple per year on any loss from the end date to the date of settlement

Actual value

This means the actual transfer value of the SIPP at the end date (the date of closure).

Fair value

This is what the transfer value would have been worth at the end date had it grown in line with the benchmark.

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, Alexander David should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. They 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.

Why is this remedy suitable?

In his complaint Mr S said he was a low risk taker. In all the circumstances, I don't think Mr S would have transferred but for St Pauls Marketing's failures. But his existing pension was invested in funds presenting a greater degree of risk than he has said he was prepared to accept. So I think it's likely he would have switched to funds better aligned to his risk profile if suitable advice had been given. I don't know exactly how he would have invested. But I think the index I have outlined above is an appropriate benchmark and is a reasonable proxy for the level of risk that Mr S was willing and able to take.

I've chosen this method of compensation because:

- Mr S wanted capital growth with a small risk to his capital.
- 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 his 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 S' risk profile was in between, in the sense that he was only prepared to take a limited level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mr S into that position.
- It doesn't mean that Mr S would have invested 50% in some kind of index tracker investment. Rather I consider this is a reasonable compromise that broadly reflects the sort of return Mr S could have obtained from investments suited to his objectives and risk attitude.
- The additional interest is for being deprived of the use of any compensation money since the end date.

My final decision

My final decision is that I uphold Mr S' complaint. I order Alexander David Securities Limited to calculate and pay compensation to Mr S on the basis I set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 3 June 2022.

David Ashley
Ombudsman