

Complaint

Mr M's complaint concerns an investment he made in a Self-Invested Personal Pension (SIPP) operated by Sippchoice Limited. Mr M has made detailed submissions and he has taken a keen interest in developments around complaints and legal proceedings concerning the actions of SIPP operators, which has led to him adding to his submissions over time. But he makes one essential point – which is that Sippchoice should not have accepted the investment he made into its SIPP or, alternatively, ought to have discovered soon after accepting the investment that it was not one it ought to have accepted. Mr M says Sippchoice either did not carry out adequate due diligence on the investment or drew the wrong conclusions, based on what it knew.

Background

Mr M received an email in July 2010, about “Pension Backed Loans”. He responded and, a few days later, had a conversation with someone from a business called SKW Investments Limited (“SKW”), who supplied him with some documents. Mr M exchanged a number of emails with the person from SKW and, later, met them and talked through the scheme that was being offered. In short, Mr M was told if he switched his existing pensions to a SIPP and invested in the shares of a company called Imperium Enterprises Limited (“Imperium”), he could take a loan of 25% of the value of his pension. The remaining 75% would then be invested by Imperium (in property, Mr M understood) and the loan would be repayable from Mr M's pension funds once his pension became due (i.e. at his retirement age).

It is now known that money invested in Imperium was loaned to a company which was to make investments, which in turn loaned the money to SKW, which funded the loans SKW was offering. In other words, this was what is commonly known as a pensions liberation scheme – a scheme that enabled holders of pensions to access funds from their pension before they were allowed to under the relevant tax rules.

Mr M decided to participate in the scheme. Imperium introduced Mr M's application to Sippchoice on 25 August 2010. The value of Mr M's existing pensions was switched to a Sippchoice SIPP, and the investment in Imperium was made on 24 September 2010. Following this, SKW paid Mr M the “loan” of 25%, as promised.

Imperium later went into liquidation, and Mr M was paid a total of £18,637.68. The 25% loan he received amounted to £22,006.18. Mr M has therefore received a return of £40,643.86, having invested £93,299 in Imperium.

Sippchoice says it understood its obligations to carry out due diligence, to check an investment was an appropriate one to allow in its SIPP. It says, after it had been approached by Imperium and asked if it would accept Imperium's investment, in summary it:

- Carried out verification of identity on both Imperium's directors.
- Reviewed Imperium's website, and the Information Memorandum for the investment.

- Took comfort from one of the directors of Imperium being a solicitor.
- Had several telephone conversations with Imperium, and satisfied itself it had good contacts in the property market and plans to purchase properties at prices that made them potentially good long term investments.
- Received assurance that any loans Imperium provided would be commercial ones to other companies, for investment purposes.
- Took account of the intended investment assets (UK property) being ones that could be easily valued.
- Understood Imperium would not be providing advice or helping consumers complete application forms.

Sippchoice accepted the first application for a SIPP from Imperium in July 2010 and the first investment in Imperium was made on 11 August 2010 - so around six weeks before Mr M's investment was made. It says it received requests to make Imperium investments on a regular basis and, because of this, requested a meeting with Imperium's directors to review things. But this meeting was difficult to arrange and did not take place until July 2011. Then, in August 2011, it says it was told by a SIPP holder that he had transferred to the SIPP to invest in Imperium in order to secure a loan. At which point it stopped accepting Imperium, and reported the issue to HMRC and the Financial Services Authority (FSA).

Sippchoice did not uphold Mr M's complaint. It said it had carried out a reasonable amount of due diligence on Imperium and, until it was told of the loans in August 2011, had no reason to think Imperium was a pension liberation scheme.

Our investigator concluded Mr M's complaint should be upheld. He said, in summary:

- There was no formal agreement in place between Sippchoice and Imperium. Sippchoice effectively agreed to accept business from Imperium based upon information available to it on its website and a series of emails and telephone calls between it the directors of Imperium.
- Sippchoice relied totally upon information being provided to it by Imperium
- Sippchoice has said that it was told by Imperium that it explicitly told potential investors to take independent advice and yet it did not ask to see evidence that this had been obtained by contacting investors to check
- Sippchoice ought to have been concerned about the fact that Imperium was, in essence, introducing its own investors to it and in all likelihood these clients were not getting advice on switching from standard pension plans to a high risk investment in Imperium.
- Sippchoice should have been aware of a possible conflict of interest which could potentially lead to consumer detriment and, at the very least, should have warranted further independent investigation.
- Sippchoice says it sought reassurance about loans not being made to consumers from Imperium. But it was not reasonable to have accepted this at face value, given that Imperium was not regulated and it had a personal interest in the investments

being made.

- Sippchoice was aware Imperium was submitting applications for investors to invest in its own shares, and had said it was not giving advice. It would have been fair and reasonable for Sippchoice to have contacted those investors, including Mr M, to explore their understanding of the risks of the investment.
- It was more likely than not that Sippchoice would have established the true reason for the investment and, as it pointed out, would not have allowed the investment to take place.
- I think that appropriate enquiries and due diligence would have led Sippchoice to conclude that Imperium was not being forthcoming with details about the funds it had raised and what those funds would be used for and, in particular, possible loans being given to its SIPP clients.
- If Sippchoice had not accepted the investment there are two likely possibilities - Mr M would've done nothing and left his pension where it was, or he would've gone elsewhere to complete the transfer of the investment into a SIPP.

Sippchoice did not accept the investigator's view. Mr M did. Both made further submissions.

Sippchoice then made an offer of settlement to Mr M. It offered to pay him £60,000 compensation, in settlement of his complaint. Mr M was not willing to accept this offer (he thought he should be paid more), and Sippchoice was not willing to further reconsider its position (i.e. to make an increased offer). So the complaint was referred to me, and I issued a provisional decision.

My provisional decision

I issued a provisional decision in December 2021. My provisional findings were as follows:

I have carefully considered all of the submissions made by Sippchoice and Mr M. I appreciate this is a long running complaint and that both parties have strong feelings about it. However, my role here is not to provide a point by point response to everything which has been said, but to reach a view on what is fair and reasonable in the circumstances, and to do that with my statutory duty – to resolve complaints with the minimum of formality – in mind.

Having considered everything I agree with the investigator in some respects – but not all. I think Sippchoice had reason to, at the very least, approach introductions of SIPP applications from Imperium, for the sole purpose of investing in Imperium, with caution. I think there were various flags which should have given some cause for concern. So I think, acting fairly and reasonably with its regulatory obligations in mind, Sippchoice should at the very least have put some additional consumer protection measures in place, such as a requirement to take regulated advice and specific targeted risk warnings about unlisted shares. And it should have kept any acceptance of business under careful review.

However, I am required to come to a decision that is fair and reasonable in all the circumstances. And those circumstances include [Mr M]'s conduct. On that point, I think the following evidence is key here.

In an email dated 13 July 2010 from Mr M to SKW Mr M says:

“on the face of it it looks okay however not quite as explained.

I have checked out SKW at companies house and seems to be in order. The security of my pension is dependant (sic) on the panel companies whom I assume SKW feed for a commission. Simple question - who are the panel companies?"

So it seems at this point it seems Imperium has not been mentioned specifically to Mr M – just investments in a "panel" companies.

In an email sent later the same day to SKW Mr M says:

"I write to confirm my continued interest in your facilities however understandably would like more information/reassurance. Indeed your own disclaimer states 'If you are unsure if any proposed course of action is right for you then we recommend that you seek advice'"

"You confirm you have a consumer credit licence and talk about compliance however compliance normally refers to FSA regulated companies."

"I am keen to move this forward but need some reassurance that this is not unduly risky. You told me if SKW Investments go bust I loose (sic) my money however the money is with a SIP (sic) vehicle."

The disclaimer Mr M refers to, which is shown on each email from SKW says:

"SKW Investments Ltd is not authorised to give financial advice and no information which is provided to you by SKW Investments Ltd or by our employees or agents should be construed as financial advice. SKW Investments Ltd are not promoting any particular course of action nor are we suggesting or recommending that you take any particular course of action. If you are unsure if any proposed course of action is right for you then we recommend that you seek advice from an appropriately qualified adviser."

So it seems at this point Mr M understood SKW was not FSA authorised, had been told by it that he could lose his money, and recognised it had been recommended he seek advice if he was unsure (as, at this point, he seems to be).

Having reviewed documents provided by SKW, in a 14 July 2010 email Mr M then says:

"I can see how this works and can understand how SKW makes their money which is fine it is a commercial World – the whole thing now makes sense and is relatively risk free for me and a great business idea from you.

I want to proceed with the loan and would like to see the full tax advise albeit I am sure it is tax risk free.

I am actually FSA approved but not for pensions therefore having sought advice about SIPP's I am fully comfortable with the whole process and would be interested in actually selling these loans - and could put some polish on your proposition and see additional ways to add credibility and make additional money.

Lets get it on."

So it seems by this point, although little time has passed since his initial query to SKW, Mr M's uncertainty has dissipated. He is by this point confident in his own ability to assess the scheme and its risks, and happy to proceed without receiving advice (other than the general advice about SIPPs he refers to, which he later said was limited to being told SIPPs

were genuine and regulated). He is also very enthusiastic about the scheme – to the extent he says he would like to sell it to consumers himself.

Taking into account his, and the other available evidence, I think it is fair to say:

- *At the time, Mr M was a financial advisor. He dealt only with mortgage and protection, so I would not expect him to have a detailed understanding of pensions and investments. But it is reasonable to expect him to have some level of basic understanding of the regulatory landscape. So he would have understood what it meant when SKW and Imperium said they could not give advice and the implications of neither of those businesses being authorised by the FSA.*
- *Mr M was happy to rely on information provided by SKW when proceeding, despite his understanding that SKW could not give advice and was not authorised by the FSA.*
- *Mr M was motivated by the loan SKW had offered. He has told us he needed the loan as he hadn't paid his mortgage. He was also clearly sold on the concept – “a great business idea”. I think these are factors which may have influenced his behavior, leading to his enthusiasm for the scheme and his confidence in his ability to assess the risks associated with it.*
- *It is reasonable to expect Mr M to have understood you are not usually allowed to access pension benefits before retirement age. I think it more likely than not Mr M understood he was doing something you are not generally allowed to do.*

With these points in mind, even if I conclude Sippchoice was at fault and should not have accepted [Mr M]'s application, and even if we were to say that no other SIPP provider acting reasonably would have allowed the investment, I still think Mr M's conduct means it is not fair and reasonable to say in this case in these particular circumstances that Sippchoice is entirely responsible for all the losses he has suffered.

However, to be clear, I do not think Mr M knowingly misled HMRC and Sippchoice. So I do not consider Mr M's conduct means that Sippchoice should bear no responsibility at all for the situation Mr M is now in – only that it would not be fair, in the particular circumstances of this case, to ask Sippchoice to pay compensation on the basis Mr M has asked.

I think in the circumstances of this particular case, Sippchoice's offer – which means Mr M receives the return of more than the capital he invested – seems fair.

Responses to my provisional decision

Sippchoice said it had nothing further to add and was still willing to offer £60,000 to settle the complaint – but subject to a number of terms.

Mr M was initially minded to settle on the basis of the £60,000 compensation offer Sippchoice had previously made. However, he then said he wanted me to make a final decision and set out why he did not agree with my provisional findings. I have considered all of what Mr M has said, but will only include a brief summary here:

- He described himself as “FSA approved” but did not say he was authorised, regulated or in any way qualified. He was simply approved under a fit and proper check in February 2010. At no time has he said he was a financial adviser or an adviser of any sort, nor has he ever been involved in mortgages

- His experience as a tied agent for a protection provider was just six months, which included training. He spent four months as an appointed representative of a business and two months with another business, when it became directly authorised. He did not have any significant experience in pensions.
- He does not agree he was knowledgeable in financial matters. Apart from setting up his pensions in the 80's and 90's he has not seen a financial adviser since. His reference to a "*safe investment*" and "*not unduly risky*" was describing his objective.
- The evidence I've focused on is only a small part of the overall evidence, and the emails from 13 July 2010 to 14 July 2010 refer exclusively to pension backed loans, not SIPPs
- I suggest the decision to invest was some sort of snap or reckless decision. But there were subsequent meetings on the 27 July 2010 and 9 August 2010 which outlined the SIPP aspect. Imperium and Sippchoice were not mentioned to him until the meeting of 27 July 2010.
- Yes, he knew SKW was not authorised. But it was not providing pension advice. He was told the pension element was carried out by the pension operator who was regulated. Once the pension operator was subsequently identified he confirmed this via the FSA register.
- SKW were selling the pension backed loans and had the necessary Consumer Credit Licence to do this. At this point the dialogue was almost exclusively about the loan so there was nothing sufficiently detailed to take advice on. He was merely looking for clarity in his considerations and reassurance that this was not unduly risky.
- Yes he was enthusiastic about the scheme, if he didn't believe in it he would not have continued. From what he had been told he believed it was a very good idea, low risk and fully approved and already in operation so why would he not want to sell them?
- It was not until his two subsequent meetings when the pension investment/SIPPs were discussed in any detail.
- At the first meeting SKW provided him with a detailed sketch of the "pension backed loan SIPP scheme" outlining how it was regulated and HMRC approval by the SIPP operator. After the meeting he verified the companies involved. All were genuine and registered at Companies House. Sippchoice was confirmed as authorised and regulated for pensions on the FSA website.
- The second meeting, with Imperium, was to answer any further queries and show him how to complete the application forms provided by email.
- He did not take professional advice as in his view his pension was safe and the scheme was approved, regulated, operating, covered by the FSA and fitted his needs.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Taking account of the factual context of this case, it remains my view that in order for Sippchoice to meet its regulatory obligations, it should have undertaken sufficient due diligence checks to consider whether to accept or reject particular applications for investments, with its regulatory obligations in mind. But that does not mean Sippchoice was under any obligation to advise Mr M on the SIPP and/or the underlying investment in Imperium. Refusing to accept an application is not the same thing as advising Mr B on the merits of investing and/or switching to the SIPP.

I remain of the view Sippchoice, at the very least, had reason to be cautious about accepting Mr M's application. But I also remain of the view I need to consider the particular circumstances of this complaint – and that the circumstances I need to consider include Mr M's conduct.

I have carefully considered all of Mr M's submissions, but have not been persuaded to depart from my provisional decision. In short, my view remains that the £60,000 compensation Sippchoice has offered is fair in the circumstances of this particular complaint.

I acknowledge Mr M's role as a financial advisor involved him advising on protection products only, as a tied advisor (and not also mortgages, as I said in my provisional decision). But I nonetheless remain of the view Mr M would likely have had some basic understanding of the regulatory landscape at the time.

I also acknowledge Mr M met with SKW and then Imperium following his initial exchange of emails with SKW and that further details of the "pension backed loan" scheme and SIPP were given to him at those meetings. But, whilst I appreciate Mr M's view is these meetings show he took time to make his decision on investment in the scheme, I remain of the view that the evidence shows Mr M was content to take his own view on the risks involved with the transaction, understood he was not receiving advice from SKW or Imperium, and that neither were authorised by the FSA. I am also satisfied Mr M was aware he had the option of taking regulated advice, and had at least a basic understanding what protections that would afford him. And I think these are the key points, rather than the pace at which Mr M made his decision to invest.

I note Mr M says he took comfort from Sippchoice's involvement, as an authorised business, and relied on that. But I think, in hindsight, he is putting more emphasis on the role of Sippchoice than he did at the time. I have not seen any evidence to show Sippchoice led Mr M to believe it was giving him advice or that Sippchoice's involvement was a significant factor in Mr M's confidence in his own views at the time. I remain of the view that Mr M's primary motivation was securing the loan, and was likely this which led to his enthusiasm for the scheme and his confidence in his ability to assess the risks associated with it.

I note there has been some discussion about the terms on which Sippchoice should make payment. To be clear, if Mr M accepts this decision, it will be binding on Sippchoice – and it will not therefore be able to attach terms to the payment.

Putting things right

It remains the case that my view is Sippchoice's offer is fair and reasonable in the circumstances; and it should not therefore do anything beyond this.

My final decision

For the reasons given, my decision is the £60,000 compensation Sippchoice has offered is fair in the circumstances of this particular case. Sippchoice Limited should therefore now pay that amount to Mr M, if he accepts my decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 28 April 2022.

John Pattinson
Ombudsman