

The complaint

Ms W has complained that she was unsuitably advised by St Pauls Marketing Limited, an appointed representative of Alexander David Securities Limited, to switch two personal pensions to a SIPP (Self Invested Personal Pension) and make high risk investments.

What happened

I issued my provisional decision on this complaint on 6 June 2022. The background and circumstances to the complaint and the reasons why I was minded to uphold it were set out in that decision. I have reproduced the relevant sections of that decision below, and it forms part of this final decision.

“Ms W’s complaint was considered by one of our investigators. In summary, he said Ms W had applied for a SIPP and a trading account in November 2016. She had transferred a total of £17,314 into the SIPP from her existing two pension providers. And then £16,413 had been transferred to the trading account and invested in Just Loans debentures and shares.

Ms W’s representative had said that she had been cold called by an unregulated party that had subsequently introduced her to St Pauls Marketing. It said that St Pauls Marketing had then carried out a financial review and provided Ms W with financial advice. It said the advice had been unsuitable as Ms W was an inexperienced and low risk investor.

The investigator thought that the complaint should be upheld. He said the promotional material he had seen relating to Just Loans debentures said, ‘An investment in the Company is only suitable for investors capable of evaluating the risks and merits of such investment and who have sufficient resources to bear any loss which may result from the investment.’

He said St Pauls Marketing promoted the investment by direct offer. And that he understood, the investment was a non-readily realisable security. He said it wasn’t admitted to an official list and, although it was listed on a recognised investment exchange, it couldn’t reasonably have been expected to be regularly traded (as defined in international standards) on that exchange. The Just Loans promotional material referred to the debentures as illiquid, said that there might be no market for them even after listing, and said that investors might need to hold them to redemption.

The investigator said that the shares were listed on the Emerging Companies Market of the Cyprus Stock Exchange and also on the Third Market of the Vienna Stock Exchange. He said volume data was difficult to obtain on the websites for either exchange, however the shares didn’t appear to be regularly traded either. The investigator said that the appropriateness rules in COBS 10 applied. He noted the rules said:

This chapter applies to a firm which arranges or deals in relation to a non-readily realisable security, derivative or a warrant with or for a retail client and the firm is aware, or ought reasonably to be aware, that the application or order is in response to a direct offer financial promotion.

And that COBS 10 required St Pauls Marketing to assess Ms W’s ‘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 is appropriate.'

The investigator said that his understanding was that Ms W had no significant investment knowledge and no experience of making investments of this nature. He said he could only conclude that the investments weren't appropriate for her.

The investigator said one of the Regulator's strategic objectives was to protect consumers, and its rules reflected that objective. He said the Regulator's Principles required St Pauls Marketing to conduct its business with integrity, pay due regard to its customers' interests and treat them fairly, and manage conflicts of interest fairly. He said whatever the precise nature of St Pauls Marketing's interactions with Ms W, they directly resulted in an inexperienced investor investing most of her pension in illiquid, high risk bonds and small company shares, from a single issuer. He said in his view St Pauls Marketing had failed to act in accordance with the Principles or in Ms W's best interests.

The investigator went on to set out how he thought fair compensation should be calculated and paid to Ms W.

Alexander David Securities Limited didn't respond to the investigator's assessment and therefore the case was passed to me to consider.

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 Ms W's original complaint or to the investigator's assessment of it. Alexander David hasn't disputed what the investigator said, or provided any further evidence or arguments.

There's only very limited evidence available to establish what happened at the time of the transfer (technically known as a switch) and investment. In my experience it's unusual for someone with Ms W's background and experience to want to transfer an existing pension in order to invest in this type of investment on their own volition, and without any prompting from another party.

Ms W's representative has said that she was cold called by another party and referred to St Paul's Marketing who conducted a financial review and went onto provide financial advice. It said she was told she would make more money by making the transfer as it would grow at a rate in excess of that if she left the pensions where they were. It said there was clear negligence in the advice to invest in such high risk investments that were not suitable for someone with no investment experience, wanted low risk investments and had a low capacity for loss.

The firm hasn't disputed this. On the balance of the limited evidence that is available, I think it's more likely than not that St Pauls Marketing did advise Ms W to switch her pension and invest in the debentures and shares. And given the significant risks presented by the investments, I don't think they were suitable for Ms W in her circumstances, particularly as she has said she wanted low risk investments and had only got a low capacity for loss.

However, if St Pauls Marketing didn't give advice to Ms W, I think the evidence shows it was involved in arranging the transaction. For the reasons given by the investigator, I think COBS 10 applied and it required St Pauls Marketing to assess Ms W's 'knowledge and

experience in the investment field relevant to the specific type of product or service offered or demand” so that it could assess whether the debentures were appropriate for her.

Ms W has said she had no investment experience and I’ve seen no evidence to suggest that she had experience of this type of investment. Both the shares and debentures presented significant risks. In my view they weren’t appropriate for Ms W given her limited knowledge and experience and this should have been clear to St Pauls Marketing.

Taking all the circumstances of the transaction into account, I think it was clear that the debentures and shares weren’t suitable or appropriate for Ms W. I also don’t think the firm met its obligations under the regulator’s Principles for Business. It failed to act in Ms W’s best interests by not ensuring the investment was appropriate or suitable for her. And it failed to ensure the suitability of its advice, which I think Ms W was entitled to rely on.

I’m satisfied that if St Pauls Marketing hadn’t advised Ms W to transfer and invest in the shares and debentures, or if it had told her they weren’t suitable or appropriate for her, she wouldn’t have transferred and invested in them.

Accordingly, I’m satisfied that St Pauls Marketing’s failures caused Ms W to transfer and invest in a product that she would otherwise not have invested into. I’m satisfied its failures caused the losses that Ms W has claimed.”

For the reasons outlined above, I said my provisional decision was to uphold Ms W’s complaint. I went on to set out how I thought Alexander David Securities Limited should calculate and pay compensation to Ms W.

I asked both parties to send me any further evidence or arguments that they wanted me to consider before I made my final decision.

Ms W, through her representative, said that she would like any compensation paid as a cash settlement rather than into her pension as she was over age 55.

Alexander David Securities Limited didn’t provide any further evidence or arguments.

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.

I think the methodology as set out in my provisional decision provides for fair compensation in this case. And that any compensation should be paid into Ms W’s SIPP subject to the provisions set out in my provisional decision. Those monies would have been in a pension even if Ms W hadn’t been advised to switch. So I think the starting point is that it’s appropriate to pay compensation where due into the pension – albeit the payment for distress and inconvenience should be paid to Ms W direct.

Putting things right

fair compensation

In assessing what would be fair compensation, my aim is to put Ms W as close as possible to the position she would probably now be in but for the firm’s failings.

I think Ms W would have invested differently. It is not possible to say *precisely* what she would have done, but I'm satisfied that what I have set out below is fair and reasonable given Ms W's circumstances and objectives when she invested.

My understanding is that Ms W reinvested the proceeds from the original debentures she bought when they matured in January 2019 into a new issue of debentures. And that St Pauls Marketing wasn't involved in that decision. I also understand that she still holds the shares, and they aren't currently tradeable.

what should Alexander David do?

To compensate Ms W fairly Alexander David Securities Limited should compare the performance of Ms W's investments 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 Ms W'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 Ms W's pension plan, it should pay that amount direct to her. 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 Ms W's actual or expected marginal rate of tax at her selected retirement age.

I think Ms W is likely to be a basic rate taxpayer at the selected retirement age, so the reduction should equal the current basic rate of tax. However, if Ms W 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 Ms W £300 for the distress and inconvenience I'm satisfied the loss in value of her pension has caused her.
- Provide details of the calculation to Ms W 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 Ms W how much it has taken off. It should also give Ms W a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

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 Ms W's acceptance of this decision

Actual value

This means the actual transfer value of the SIPP at the end date, excluding the value of the bonds. If, at the end date, the JLG shares are illiquid (meaning they cannot be readily sold on the open market), it may be difficult to find their *actual value*. So, the value of the shares should be assumed to be nil to arrive at fair compensation. Alexander David Securities Limited should take ownership of the illiquid investment by paying a commercial value acceptable to the pension provider. This amount should be deducted from the compensation and the balance paid as above.

If Alexander David Securities Limited is unable to purchase the shares their value should be assumed to be nil for the purpose of calculation. Alexander David Securities Limited may wish to require that Ms W provides an undertaking to pay Alexander David Securities Limited any amount she may receive from the shares in the future. That undertaking must allow for any tax and charges that would be incurred on drawing the receipt from the pension plan. Alexander David Securities Limited will need to meet any costs in drawing up the undertaking.

Fair value

I don't think Ms W would have transferred but for the firm's failings. So the fair value is what the sums transferred from the previous plan, plus any charges incurred within those plans on transfer, would have been worth at the end date had they achieved a return in line with the benchmark.

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, Alexander David Securities Limited 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. 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 sum that matured and was then reinvested of £12,614 on 25 January 2019 should be deducted in this way.

Why is this remedy suitable?

Ms W has said that she was a low risk investor. As I have said above, I don't think Ms W would have transferred her pension but for the firm's failings. I don't know exactly how she would have invested. But I think the index I have outlined above is an appropriate benchmark and is a reasonable proxy for the lower level of risk that Ms W was willing 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 Ms W's risk profile was in between, in the sense that she was only prepared to take a limited level of risk to attain her investment objectives. So the 50/50 combination would reasonably put Ms W into that position.

It doesn't mean that Ms W 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 Ms W could have obtained from investments suited to her objective and risk attitude.

My final decision

My final decision is that I uphold Ms W's complaint.

I order Alexander David Securities Limited to calculate and pay compensation to Ms W as I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms W to accept or reject my decision before 27 July 2022.

David Ashley
Ombudsman