

complaint

Mrs H feels the advice she received from Premier Financial Solutions (Harrogate) Limited (Premier) to transfer her pensions into a self-invested personal pension (SIPP) was unsuitable.

background

In October 2010, Mrs H was introduced to Premier by a third party. Premier advised her to transfer existing personal pensions into a SIPP. That was to allow her to invest in overseas property. The pensions were all of her pension provision.

Mrs H's attitude to risk was assessed as "*Medium (Balanced Managed)*". Her SIPP fund was put into an unregulated investment in the Rimondi Grand Hotel & Spa in Crete.

In October 2015, Mrs H complained that the investment was unsuitable. She is being represented. Premier rejected her complaint. It said it had advised Mrs H only on the transfers to her SIPP, not on the suitability of the underlying investment. The property purchase documents were completed by Mrs H after the firm's suitability report was sent to her - but before the SIPP application and pension transfer documents were completed. In other words, she had self-invested. Premier said it pointed out in the suitability report it was happy to provide investment advice. And that Mrs H could contact them if she wanted this.

Mrs H's representative then brought the complaint to us. Our adjudicator upheld it. She said the regulator's Principles and Conduct of Business Rules had required the adviser to take account of Mrs H's planned investment strategy when advising on the SIPP. This had been confirmed in an alert the regulator had issued in 2013. She considered the unregulated investment had been unsuitable for Mrs H's modest financial circumstances and lack of investment experience. Premier should pay redress including £500 for the distress and inconvenience caused to Mrs H by the problems with her pension.

Premier rejected the adjudicator's conclusion. It argued:

- Mrs H had wanted to self-invest in non-mainstream products because she felt she'd otherwise have a very small pension.
- It met the requirements of the regulator's rules at that time. It hadn't limited its advice as its suitability report had offered to provide full advice. But Mrs H had returned all signed documents before the transfer went ahead.
- No investment had actually been selected at the time of the advice.
- It was outside Premier's control that the investment didn't match Mrs H's medium risk profile. The suitability report had warned her to ensure any investments she selected did. If she'd asked for advice on the unregulated investment, the firm would have pointed out it didn't match her stated risk attitude.
- They had warned Mrs H not to rely on information from third parties as it wouldn't be advice. If she proceeded with the investments on that basis, it would be execution only.

- The underlying issue is the role of unregulated advisers because the regulator can't hold them responsible in these cases. There are cases where the regulated adviser has been involved with the unregulated investment. But Premier had no involvement with or knowledge of it. The ombudsman service has adopted a blanket approach of forcing these complaints onto regulated advisers to allow for compensation.
- It hasn't received a response to a previously-raised point about a Pensions Ombudsman Service determination where the contract documents clearly said investments will be selected by the member. The complaint wasn't upheld and the firm believes the Financial Ombudsman Service has to be consistent in its findings.

Because the complaint couldn't be resolved it was referred to me.

my findings

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

what did Premier do?

Mrs H was referred to Premier by an unregulated third party. Premier now says that it did not know the investment that was to be made. Premier recommended a SIPP so that Mrs H could self-invest. Warnings were given about the risks of self-investing and the costs of using a small fund. No advice was given about the investment.

what should Premier have done?

The advice was given in 2010. The rules at the time required regulated firms to know their client and give suitable advice. Premier knew that Mrs H had a small pension fund. They also knew that the unregulated introducer was selling overseas property investments. The intended investment was the Rimondi Grand Hotel & Spa Resort, in Crete. The fact find shows Premier was aware of the planned investment – as does the fee agreement signed by Mrs H in September 2010. I think that Premier knew or ought to have known that Mrs H intended to invest in overseas property.

The regulator issued an alert in January 2013. This explained the regulator's view that suitable advice could not be given to start a SIPP without considering the investment to be made. I agree with that approach. And the alert made it clear this was not new guidance, but it was confirming the regulator's view of the existing rules.

Mrs H had a small pension fund. Premier identified that there were risks using a small pension fund because of the costs involved. Mrs H's circumstances indicate she could not afford to lose her pension fund. She did not have the capacity for loss to invest in Rimondi Grand. In my view, suitable advice would have been not to transfer to the SIPP.

what would Mrs H have done if Premier had advised her not to transfer to the SIPP?

Premier is a firm regulated to give financial advice. Mrs H was introduced to Premier by an unregulated firm selling overseas property. It's possible that Mrs H would have invested in Rimondi Grand even if Premier had advised her not to do that. However, the evidence indicates that Mrs H made the investment because she thought she would achieve a good return. In my view, Premier ought to have advised her against the investment. There were a number of risks in making investment, including the structure of the investment and how the returns would be made to Mrs H's SIPP. This was a large part of her pension provision and I don't think Mrs H should have been advised to take these risks.

Mrs H does not appear to have any reasons to invest other than to achieve a higher return. I think she would not have invested if Premier had advised her not to do so.

It must have been distressing for Mrs H to realise that she could not access her pension. The adjudicator thought a payment of £500 should be made to compensate for the distress and inconvenience caused. I agree that a payment within our moderate range of such awards should be made. This was at a time when Mrs H's husband had also been caused problems by similar advice. I think that they must have been worried about this. I think £500 is appropriate.

I'm aware of the determination by the Pensions Ombudsman Service. That complaint was about maladministration by the SIPP provider. I am required to consider the individual circumstances of each case. This complaint is about the advice given by Premier. It is very different to the complaint Premier has referred to that was determined by the Pensions Ombudsman Service.

fair compensation

My aim is that Mrs H should be put as closely as possible into the position she would probably now be in if she had been given suitable advice. I take the view that Mrs H would have invested differently. It's not possible to say *precisely* what she would have done differently. But I'm satisfied that what I've set out below is fair and reasonable given Mrs H's circumstances and objectives when she invested.

what should Premier do?

To compensate Mrs H fairly, Premier must:

- Compare the performance of Mrs H'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.

If there is a loss, Premier should pay into Mrs H's pension plan to increase its value by the total amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief.

Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.

If Premier is unable to pay the total amount into Mrs H'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 total amount should be reduced to *notionally* allow for any income tax that would otherwise have been paid.

The *notional* allowance should be calculated using Mrs H's actual or expected marginal rate of tax at her selected retirement age. Mrs H is likely to be a basic rate taxpayer in retirement. The reduction should equal the current basic rate of tax. However, Mrs H would have been able to take a tax free lump sum. The reduction should be applied to 75% of the compensation.

- Pay to Mrs H £500 for the distress caused by the loss to her pension fund.

Premier should add interest as set out below. Income tax may be payable on any interest paid. If Premier deducts income tax from the interest it should tell Mrs H how much has been taken off. Premier should give Mrs H 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	FTSE UK Private Investors Income Total Return Index	date of investment	date of my decision	8% simple per year from date of decision to date of settlement

actual value

This means the actual amount payable from the investment at the end date.

It may be difficult to find the *actual value* of the investment. So, the *actual value* should be assumed to be nil to arrive at fair compensation. Premier 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 I set out above.

If Premier is unable to buy the investment, the *actual value* should be assumed to be nil for the purpose of calculation. Premier may require that Mrs H provides an undertaking to pay Premier any amount she may receive from the investment in the future. That undertaking must allow for any tax and charges that would be incurred on drawing the receipt from the pension plan. Premier will need to meet any costs in drawing up the undertaking.

fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

why is this remedy suitable?

I've decided on this method of compensation because:

- Mrs H wanted capital growth and was willing to accept some investment risk.

- 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 would be a fair measure for someone who was prepared to take some risk to get a higher return.
- Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mrs H's circumstances and risk attitude.

my final decision

I uphold the complaint. Premier Financial Solutions (Harrogate) Limited must calculate and pay compensation as set out above.

Premier should provide details of its calculation to Mrs H in a clear, simple format.

Under our rules, I'm required to ask Mrs H to accept or reject my decision before 20 December 2017

Roy Milne
ombudsman