complaint

The late Mr B complained that he was given advice by Ian Ferrell Associates Limited ("IFA") which caused him a financial loss, because he was unable to make a claim under his critical illness insurance policies after they had been cancelled.

background

In 2005, Mr B sought advice from IFA about his investments and pensions. At that time, he had two Individual Savings Accounts (ISAs), each of which included a lump sum benefit if Mr B was diagnosed with a critical illness. IFA recommended that Mr B start a new ISA with a different insurance provider and Mr B followed this advice. The new ISA did not have any attached critical illness insurance.

Mr B was subsequently diagnosed with a critical illness and found he was not entitled to claim a benefit. He complained to IFA, saying that he would have been able to make successful critical illness claims if he had not followed IFA's advice. He was also dissatisfied with the pensions advice he was given around the same time. IFA stated that it had not given any advice in relation to critical illness insurance and was not responsible for the lack of cover.

Mr B passed away after bringing formal complaints, which were assessed separately.

IFA argued that the critical illness complaint was outside the jurisdiction of the Financial Ombudsman Service because of a delay, but the adjudicator did not agree. He considered that there was no delay because it was only after he was diagnosed with an illness that Mr B realised there was a problem with his investments.

IFA did not agree with the adjudicator. It submitted new documents to prove it had discussed critical illness insurance with the late Mr B, who stated he no longer wished to have this cover.

The adjudicator was concerned that there was no explanation for the late submission of this evidence. He did not consider it was persuasive and noted that the file review made no mention of pensions advice, although that advice was the main purpose of the meeting in 2005. He also felt concerned that these documents contradicted IFA's earlier stance that it had not provided any advice on critical illness insurance. He accepted Mr B's account that he had never received advice on critical illness. He remained of the view that the complaint was within jurisdiction.

However, the adjudicator did not consider the complaint was justified. He noted that the late Mr B had completed a financial planning questionnaire, in which he told IFA that he had critical illness insurance through work and did not wish to discuss critical illness insurance any further. He also noted the late Mr B had signed to confirm that the adviser may not be able to give the best advice, as he had withheld certain details. The adjudicator considered that IFA could not be held responsible for failing to advise on the late Mr B's critical illness cover.

A representative for the late Mr B disagreed with the adjudicator's view. He said it was unreasonable of IFA to ask the late Mr B to sign a limited information disclaimer, and felt IFA still had a duty to advise the late Mr B about any benefits he might lose when transferring the ISA.

I issued a provisional decision explaining why I was minded to uphold the complaint. I considered that the late Mr B relied on the advice of IFA to cancel his existing critical illness insurance policies; and that this advice caused him a significant financial loss. I was minded to require IFA to compensate the late Mr B's estate by paying an amount equivalent to the critical illness insurance benefits plus interest and £1,000 for distress and inconvenience.

responses to my provisional decision

Both parties responded. The estate of the late Mr B accepted my provisional conclusions, but IFA did not. Its solicitors stated that the complaint was against the director of the insurance intermediary which provided the advice (Churchill Wealth & Asset Management Ltd) and his business, not against IFA. That director was also a former director of IFA but was no longer involved in IFA's business. They pointed out that the complaint form did not name IFA as the business complained about.

my findings

I have reconsidered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

There are three issues for me to consider: whether the complaint is within jurisdiction; whether it is correctly addressed to IFA; and, if so, whether it is justified.

The Financial Services and Markets Act 2000 gives me the power to determine complaints according to rules ("DISP") made by the Financial Conduct Authority ("FCA"). These rules are set out in Chapter 2 (DISP 2) of the FCA's Handbook of Rules and Guidance. DISP 2.8.2.R (2) sets out the general time limits for making a complaint. It states that I cannot consider a complaint which is made more than six years after the event complained of or, if later, more than three years from the date the complainant was aware (or should have been aware) they had cause for complaint.

I agree with the adjudicator that the late Mr B had no reason to appreciate that he had cause for complaint until he was diagnosed with a critical illness and sought to claim the benefit payments provided under his previous ISAs. Mr B made his complaint within three years of diagnosis and, in my judgment, the complaint is within jurisdiction.

The second issue is which business is the subject of the complaint. The advice was given by one of the two directors at Churchill Wealth & Asset Management Ltd. I am satisfied that the director was acting on behalf of Churchill Wealth & Asset Management Ltd, not in an individual capacity.

According to the FCA, Churchill Wealth & Asset Management Ltd is a business name of IFA. I am satisfied that IFA is accordingly liable for the advice given by Churchill Wealth & Asset Management Ltd. IFA's solicitors have not put forward any evidence or argument to counter this conclusion. They asserted that, because the complaint form named the business established by the director, rather than IFA, this meant that the complaint was not validly set up against IFA.

I see no merit in this assertion and I find the registration details from the FCA demonstrate that IFA is liable for the advice given to Mr B. Whilst I accept that the complaint form stated that the complaint should be investigated against the business incorporated by the director

after he left Churchill Wealth & Asset Management Ltd, that is not and has never been a possibility.

The only connection between that new business and Mr B was the fact that he was advised by a director of Churchill Wealth & Asset Management Ltd who later was involved in a new business. That is not a correct or legal basis for a complaint about the new business. Complaints about the advice given by Churchill Wealth & Asset Management are properly considered against IFA.

Finally, I have considered the advice given to Mr B regarding the cancellation of his existing ISAs with the associated critical illness cover. Neither IFA nor its solicitors has commented on my provisional conclusions and therefore I repeat them.

IFA submitted documents completed in 2005 relating to its recommendations. These show clearly that IFA gave Mr B advice about his investments and pension arrangements, contrary to its assertions. It is apparent from the documents that IFA did not have full information about the ISAs when it made a recommendation to Mr B to transfer into a new plan. I find very surprising the statement that the existing ISAs were "paid up" because the evidence shows that the premiums ceased only after the advice to transfer was given.

IFA set out its recommendations in a letter of 16 May 2005. This makes no mention of the attached critical illness insurance benefits and there is also no mention of critical illness insurance on the ISA transfer documents.

I appreciate that the late Mr B signed a financial planning questionnaire under a declaration which states:

> "*I further declare that I have withheld certain details and that I am aware that this may prevent my advisor from being able to provide the best possible advice for my circumstances*".

However, I do not agree with IFA that this was sufficiently clear to demonstrate that Mr B understood that the advice he received was not reliable. I consider it significant that the information relating to the ISAs which IFA recorded on the various documents is incomplete and inaccurate. For example, I note the comment *"???"* in relation to life cover in the comparison table; and *"only existing ISA"* in the Investment Section 7; as well as the comments in Section 3 Life Assurance and Critical Illness Planning *"Via work"* and in Section 4 – *"Client has life cover/CIC + income cover through work"*, without any details of the critical illness cover associated with the two ISAs. There is no evidence showing that the late Mr B had any such protection as part of his employment arrangements.

Looking at the evidence as a whole, I am not satisfied on a balance of probabilities that the advice given by IFA to the late Mr B was appropriate or suitable for someone in his circumstances. I am satisfied on a balance of probabilities that Mr B suffered a serious financial loss as a result of following IFA's advice and I require IFA to compensate the late Mr B's estate by paying the amount of benefits which Mr B was unable to claim, plus interest from the date when he received his critical illness diagnosis.

I have also considered the distress and inconvenience the late Mr B suffered as a result of being informed he was not entitled to any critical illness insurance benefit. I bear in mind the fact that Mr B survived for over one year after his diagnosis and that he had to pursue his complaint throughout that period. I also consider it relevant that Mr B was very concerned about his family's financial position.

I follow the courts which generally make only modest awards. In this case, I considered that these are exceptional circumstances which merit an exceptional award. I explained in my provisional decision why I wad minded to require IFA to pay compensation of £1,000 which I considered was appropriate in the circumstances. IFA and its solicitors did not put forward any observations on the award of compensation. I therefore conclude that a payment of £1,000 is justified and appropriate.

my final decision

It is my decision that this complaint is within jurisdiction.

It is my final decision that the complaint was properly considered against Ian Ferrell Associates Limited.

It is my final decision that the late Mr B relied on the advice of Ian Ferrell Associates Limited and that this advice caused him a significant financial loss.

I require Ian Ferrell Associates Limited to compensate the late Mr B's estate by paying an amount equivalent to the critical illness insurance benefits attached to his cancelled ISAs plus interest on each, calculated at the gross annual rate of 8% simple (less tax if properly deductible) from the date of the late Mr B's diagnosis until settlement is made.

I also require Ian Ferrell Associates Limited to pay the late Mr B's estate £1,000 compensation for the distress and inconvenience he suffered.

I make no other award against Ian Ferrell Associates Limited.

Reidy Flynn
ombudsman