

complaint

Miss S has complained about Serenus Consulting Limited. She says that it arranged a Self Investment Personal Pension (SIPP) for her which was unsuitable. Accrued benefits she held in an occupational pensions scheme (OPS) were transferred into the SIPP and she lost the guaranteed benefits the OPS had provided.

Miss S is represented in this complaint.

background

Miss S consulted Serenus in 2012. She says she was cold-called about an investment opportunity with Store First. She thinks the call was from Serenus although it denies this.

In any event, she did consult with Serenus and it completed a fact-find and provided a report. The report explains the aim of analysing "*the possible transfer*" of benefits Miss S had in the OPS which was a defined benefits pension scheme. The report compared the benefits of Miss S remaining in the OPS against transfer to the SIPP.

Serenus provided a 'Financial Planning Report' in March 2012. This said that Ms S had "*made the decision*" to invest in Store First "*with no advice or recommendation*" from it.

It also said that Serenus would normally analyse a prospective investment but Miss S did not require this. The report went on to say that the critical yield required to match the benefits from the OPS which were being given up "*will be difficult to achieve*".

The report reiterated that Miss S didn't require advice on the suitability of the SIPP.

Miss S went ahead and around £146,000 was transferred into the SIPP and then £140,000 invested in Store First.

Ms S complained to Serenus in 2017. The complaint was then referred to this service. At first Serenus didn't consent to this service considering the complaint. The complaint form had referred to advice in 2011 (not 2012) and so Serenus said it was more than six years ago and too late.

Our adjudicator explained that there was a typographical error. The advice had been given in 2012 (which Serenus must have known) and so the complaint was made in time. Serenus asked for a decision and another ombudsman confirmed the complaint was in time.

The adjudicator then considered the merits and decided that the complaint should be upheld. He noted that Serenus had said that it had, in effect, set up the SIPP on an execution-only basis.

He said that execution-only sales typically arise when a consumer has a specific course of action in mind. In other words, the consumer has made his or her own decision based on their own research, knowledge and/or investment experience. The consumer doesn't think he or she needs any advice.

The adjudicator said that he wasn't satisfied that Miss S had researched Store First in 2012 but must have been told about it. He didn't think the transaction had all the hallmarks of an execution-only sale.

The adjudicator went on to say that he didn't accept that the content of the Financial Planning Report should mean that Serenus wasn't responsible for giving suitable advice to Miss S. He said that Serenus had a responsibility to act in her best interests. The Store First investment was high risk and speculative – and Serenus should have known that. COBS 2.1.1R requires a firm to act "*honestly, fairly and professionally in accordance with the best interests of its clients*".

The adjudicator explained that this was an independent duty. Serenus couldn't just say Miss S had already decided what she wanted to do and carry out her wishes regardless of whether it was in her interests.

He said that COBS 9.2.1 required Serenus to take reasonable steps to ensure the recommendation was suitable, taking account of Miss S's circumstances, objectives, knowledge and experience. COBS 9.2.2 required Serenus to gather information as was necessary to have a reasonable basis for believing Miss S was able to bear the risks inherent in the Store First investment, and that she understood the risks.

He said this is because the risks of the SIPP depended almost entirely on the risks of the proposed investment. In his view, in order to take reasonable steps to ensure the SIPP was suitable, the risks of the proposed investment had to be considered. If the risks of the investment were too high, it would make the SIPP unsuitable.

The adjudicator notes that Miss S had said that in 2012 she had been unemployed for some time. She was living in rented accommodation and bringing up children. She had no other investments or savings and says that she was dependent on state benefits.

The adjudicator said that although Serenus said Miss S did not ask for advice it should have stepped in to explain the very significant risks she was taking, and the possibility of total loss. If it had, Miss S would not have gone ahead.

Serenus didn't agree. It responded and said, in summary;

- It didn't cold call Miss S and it finds the weight attached to this aspect troubling.
- There is correspondence from solicitors representing Miss S which refers to a third party and suggesting that the third party was an introducer.
- It has no relationship with that third party.
- It is clear from the documentary evidence that Miss S had decided to proceed with the investment in Store First at an early stage before it was involved.
- Miss S only recalls dealing with Serenus but there were clearly a number of other parties involved so her recollection must be defective.
- When Miss S contacted the SIPP provider after the transfer and asked if she could lose her all money this evidenced that no advice had been given by Serenus.
- COBS 9.2.1 only applied when a personal recommendation was made and that was not the case here.

As no agreement has been reached the case has been referred to me for a decision.

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 summarised what both parties have said but I've read everything.

I agree with the adjudicator and broadly with his reasoning. I uphold this complaint.

I agree with Serenus that Miss S's recollection of events in 2012 may not be complete. It may be that an unregulated third party introducer was involved in promoting the Store First investment to her. However, we do know that Miss S consulted Serenus as that is clearly documented and not disputed.

Serenus had professional and regulatory obligations. It says that it didn't provide any personal recommendation to Miss S. But when describing what it was to do for her it said;

'what you have asked us to do is to analyse your current pensions to highlight any disadvantages in transferring your pension to the SIPP. Once again you have asked us for advice to determine if your pensions can be moved to the SIPP, whether there are any significant issues that would disadvantage you in doing so, and help to complete the necessary paperwork to achieve your aim'

So this seems to confirm that Miss S had asked for advice and that Serenus intended to provide advice – even if that was to be limited in some way. It may be that Serenus didn't give advice about the Store First investment but it knew it was Miss S's intention to invest in it.

COBS 2.1.1R required Serenus to act *"honestly, fairly and professionally in accordance with the best interests of its client."* This is an independent duty on the firm. It cannot simply say that the customer had already decided what she wanted to do and so that is what it did regardless of whether it was in her best interests or not.

I'm also mindful of the principles for business and in particular principles 1 (*integrity*), 2 (*due skill, care and diligence*), 6 (*customers interests*) and 9 (*reasonable care*).

Serenus set out that it would advise on the advantages and disadvantages of a SIPP. So it had an obligation to consider whether it was in her best interests and had an independent duty to give suitable advice.

Serenus was making a personal recommendation even if, on its own account this was only about the SIPP and not the investments within it. I think COBS 9.2.1 required it to obtain the necessary information about Miss S's knowledge and experience relevant to the specific type of investment and the investment objectives. Having done so, COBS 9.2.2 required it to consider whether the transfer to the SIPP met her investment objectives, she could bear the risks involved and that she understood the risks.

To be able to advise in accordance with the rules, Serenus had to understand the risks associated with the investments. Without this information I don't think it could say whether the transfer to the SIPP was suitable or not (or decide on the advantages and disadvantages of it).

GEN 2.2.1 says *"every provision in the Handbook must be interpreted in the light of its purpose."* The purpose of COBS 9 is to ensure consumers receive advice that's suitable in their circumstances. To interpret COBS 9.2 in a narrow way so that Serenus did not consider the purpose of the SIPP avoided looking at all of the factors that the rule (and the rest of Chapter 9) says are necessary to ensure suitability.

Serenus provided advice about the SIPP. The transfer to the SIPP meant that the funds would be invested. The advice to transfer to the SIPP could only properly be considered if some thought was given to the investments to be made. Even if another party had recommended or promoted the Store First I'm satisfied that Serenus had to consider where the investments were to be made as part of its advice on the SIPP. It could not close its eyes to this aspect.

The transfer to the SIPP involved the loss of guaranteed benefits and so the advice had to consider where the funds were to be invested to justify the reasons to transfer.

Serenus knew Miss S would invest in Store First when the SIPP was set up. Store First is an unregulated investment. Store First paid a rental return of 8% for the first two years. After that there was no guarantee of occupancy or rate of return. There was no guarantee that a tenant would be found. In that case the investor would have to use other funds to cover the ongoing fees. There was no ready market for this type of investment. The investment had a buy back guarantee. However there seems to be little to back up this guarantee apart from the word of the company.

I'm satisfied that the Store First investment was high risk and speculative. I can't see how it would be considered suitable for Miss S. Whether she was in employment or not, I can't see how it could have been suitable or in her best interests to transfer all of her existing pension benefits and make this investment. I don't think Miss S was in a position to accept the risk Store First posed and certainly not with all of her accrued (final salary) pension benefits. The lack of diversity also compounds the high risk nature of the investment itself.

I think the advice about the advantages and disadvantages of the SIPP should have considered the investments to be made. Store First was unregulated and exposed Miss S to a number of risks. I'm not satisfied that Miss S was in a position to accept this degree of risk with her pension fund and she ought not to have transferred. Serenus itself had said that the returns necessary to match the benefits from the SIPP were not likely to be achieved.

I'm satisfied that if Serenus had acted in her best interests and provided her with suitable advice Miss S would not have transferred. I think her contact with the SIPP provider as the transfer went ahead evidences that she was unsure about the risk she was taking. If this had been spelled out for her, as it should have been, I don't think she would have gone ahead.

So I've decided that it is fair and reasonable to uphold this complaint and require Serenus to meet any losses arising from the transfer away from the OPS.

putting things right

My decision is that I uphold the complaint, and that a fair and reasonable outcome would be for the business to put Miss S, as far as possible, into the position she would now be in but for the unsuitable advice.

Serenus must undertake a redress calculation in line with the regulator's pension review guidance as updated by the Financial Conduct Authority in October 2017.

This calculation should be carried out as at the date of this decision, and using the most recent financial assumptions published. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of acceptance of the decision.

Serenus may wish to contact the Department for Work and Pensions (DWP) to obtain Miss S's contribution history to the State Earnings Related Pension Scheme (SERPS or S2P). These details should then be used to include a 'SERPS adjustment' in the calculation, which will take into account the impact of leaving the occupational scheme on her SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Miss S's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Miss S as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. 25% of the loss would be tax-free and 75% would have been taxed according to her likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

Where I consider that total fair compensation requires payment of an amount that might exceed £150,000, I may recommend that the business pays the balance.

determination and money award: I require Serenus to pay Miss S compensation as set out above, up to a maximum of £150,000.

The compensation resulting from the loss assessment must where possible be paid to Miss S within 90 days of the date Serenus receives notification of her acceptance of my final decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement for any time, in excess of 90 days, that it takes it to pay this compensation.

It's possible that data gathering for a SERPS adjustment may mean that the actual time taken to settle goes beyond the 90 day period allowed for settlement above – and so any period of time where the only outstanding item required to undertake the calculation is data from DWP may be added to the 90 day period in which interest won't apply.

recommendation: If the amount produced by the calculation of fair compensation exceeds £150,000, I also recommend that Serenus pays Miss S the balance. I further recommend interest to be added to this balance at the rate of 8% per year simple for any time, in excess of 90 days, that it takes it to pay her from the date it receives notification of acceptance of the decision, as set out above.

If Miss S accepts my determination, the money award is binding on Serenus. My recommendation is not binding on it.

Further, it's unlikely that Miss S can accept my determination and go to court to ask for the balance of the compensation owing to her after the money award has been paid. Miss S may want to consider getting independent legal advice before deciding whether to accept this decision.

my final decision

I uphold this complaint about Serenus Consulting Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 15 November 2018.

Keith Taylor
ombudsman