complaint

Mr B's complaint concerns the advice he received from Clifton Compliance Services Ltd (Clifton) to transfer his existing pension arrangements into a self-invested personal pension (SIPP). He is also unhappy with the events which unfolded following this course of action.

background

The background and circumstances of Mr B's complaint are set out in my provisional decision dated 26 February 2014, which is attached and forms part of my final decision. My provisional decision was that I was unable to uphold Mr B's complaint.

Mr B's representative responded on his behalf. He disagreed with my findings and provisional decision. He considered that Clifton's advice was negligent and flawed. He made the following points:

- Clifton's charges were excessive, contrary to the regulator's guidelines and put considerable stress on the individual funds of two of the members of the scheme.
- A member could only transfer or take benefits if there was sufficient liquidity available which would be unlikely, given that the bulk of the funds were invested in the domain name.
- The members were led to believe that their individual pension 'pots' were 'ring fenced and safe'.
- There are widespread concerns in the financial industry about the suitability for loans and the valuation of such a holding – a domain name – and mainstream SIPP providers tend to avoid this type of investment.
- No reviews have taken place since the SIPP was set up. The funds that were not used to purchase the domain name have been held in cash, which has led to the funds being eroded by the SIPP fees. Annual statements have not been received.
- The summary of advice and recommendation was not received until after Mr B complained.
- Mr B has said that his attitude to risk was never properly assessed and a personal fact find was never completed.
- Alternative sources of funding were never discussed despite the fact that the members had property that could have been used to obtain conventional lending which was likely to have been cheaper. Clifton's adviser concentrated solely on the benefits on this form of self investment and did not highlight any of the risks.
- The leaseback payments were clearly unaffordable for Mr B's company and no thought appears to have been given as to how that company would meet the liability. In addition VAT was payable on the leaseback payments and no provision was made by the advisor to ensure that a SIPP VAT account was set up.
- The funds released through the sale of the domain name were made payable to an individual member of the SIPP and not to the company which has caused tax problems for that individual.
- The domain name (the intellectual property (IP)) never formed part of the company's property and as such has no value.
- The SIPP administrator (appointed by and owned by Clifton) did not conduct due diligence in facilitating the valuation and the holding of the IP as an asset within the SIPP.

I have also seen and taken into account Mr B's comments on the above.

my findings

I have reconsidered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. I have in particular considered the points made by Mr B's representative. But I have not been persuaded to depart from the views I expressed in my provisional decision. My further comments follow.

Certain aspects of this matter do not fall within the ambit of this complaint. As I said in my provisional decision, any suggestion that the IP was not correctly valued is not a matter which I can consider – the domain name was valued by an independent specialist third party and so any complaint that the valuation was over stated would be a matter for the third party concerned (although I understand it may no longer be trading).

In saying that I note what has been said about the company never having owned the domain name. But our research indicates otherwise – a domain name search shows that the domain name is registered to Mr B's company (the company in respect of which the advice was given and from which the IP was purchased) and has been since 2008.

The SIPP provider's role in the matter has also been mentioned – in particular that the IP should not have been accepted as a suitable SIPP investment/asset. Mr B's complaint has been made against Clifton and I can only consider Clifton's (advisory) role in the matter. It is up to Mr B if he wishes to pursue a separate complaint against the SIPP provider.

Similarly it seems to me that the release of the funds by a cheque drawn in favour of an individual, and not the company, was an administrative error by the SIPP provider and so, again, not something for which Clifton is responsible.

As to the charges, I agree that these were high. But, in my view, the charges were clearly set out. I do not think that the level of charges meant that there was a breach of any of the regulator's guidelines.

The main issue remains the suitability of the advice, and whether Mr B understood the risks involved. As I said in my provisional decision, the arrangement was somewhat unorthodox but it is not precluded by regulations or otherwise. It was however high risk and described by Clifton as such – the suitability report referred to the arrangement as 'potentially high risk'. It said that the level of risk was dependent on numerous factors, including the current financial strength of Mr B's company. The report also contained a number of risk warnings. As I have said elsewhere, Mr B was best placed to assess the current and future viability of the company.

I note Mr B says that he did not receive the recommendation letters. There is a considerable volume of documentation, much of which is signed by Mr B. I cannot say with any certainty now whether other, unsigned, documents were received. But I find it difficult to see that Mr B would have gone ahead in the absence of a clear recommendation to do so, setting out in full the strategy, risks etc. On balance I think it more likely than not that complete documentation was provided to him.

As to whether any assurance was given by Clifton that Mr B's pension fund was in some way protected, it seems to me that, realistically, Mr B would have understood, by the very nature of the arrangement, that his pension fund would be at risk if his company failed to make the required repayments. I have seen nothing to suggest that Clifton gave him anything to indicate otherwise and, as I have said, the arrangement was described as high risk.

As to affordability, it was Mr B's company so he was well placed with, if necessary, advice from the company's accountant, to judge whether the company could afford to meet the loan repayments.

As to whether alternative funding was available, although Clifton recorded that this was not possible - due to the security requirements for security that would have been imposed – Mr B now says that he could have borrowed from other sources which would have been cheaper. But whether or not Clifton's record is correct, it seems to me that, in any event, Mr B would have been aware that it might be open to him to raise business capital by another route. Given that there was a year between the proposal first being discussed and Mr B going ahead he did have time to research alternative funding sources.

Lastly I note the comments made about the balance of the funds being held in the SIPP bank account which has meant that there has been no investment growth and erosion of the fund due to the charges deducted. Ordinarily Mr B would have been alerted to the situation by annual statements for the SIPP but I note he says that these were not received.

I am not sure what the SIPP provider's practice is and whether annual statements are sent (or copied) to the member concerned. If that is the case then any failure to receive the statements might be due to an oversight on the SIPP provider's part. That said, I would have thought that Mr B, if he had not received any statements for some time, would have contacted the SIPP provider to request them.

But that (and arguments as to whether Mr B ought to have been aware from the outset that the balance was held in cash) aside, what seems to have happened is that difficulties arose quite quickly. The company failed to meet the repayments, which led to Mr B's complaint being made and his relationship with Clifton deteriorating. All in all I think it would have been apparent to him fairly early on that Clifton was not providing on going advice and that he would need to seek advice elsewhere. After Mr B had complained I do not see that it was unreasonable on Clifton's part not to proffer further advice.

my final decision

I do not uphold the complaint and I make no award.

Lesley Stead
ombudsman

COPY OF PROVISIONAL DECISION

complaint

Mr B's complaint concerns the advice he received from Clifton Compliance Services Ltd (Clifton) to transfer his existing pension arrangements into a self-invested personal pension (SIPP). He is also unhappy with the events which unfolded following this course of action.

background

Our adjudicator wrote to Mr B in August 2012 concluding that the complaint could not be upheld. In summary, the adjudicator said that certain elements of the complaint could not be considered by this service including the registration of the SIPP for value added tax (VAT). Nor could we consider the valuation (by a third party) of the domain name of his company's website.

The adjudicator also concluded that although the arrangement itself was somewhat unusual, Mr B had gained access to his pensions before his selected retirement date and had used these funds to support his business. The adjudicator considered this to be a financial gain and as such, did not consider it appropriate to recommend any redress.

Mr B did not agree and said in summary:

- He was looking to set up a new company in 2010 and was advised that funds could be raised via his pension. He was also told that it was not worthwhile looking elsewhere for funding.
- He never received the recommendation letter and may have considered alternative funding had the letter been received.
- He was expecting a small self-administered pension scheme (SSAS) and a loan not a SIPP.
- Registering the SIPP for VAT was incorrect and he thought the VAT agent would carry out any work in respect of VAT. This had led to difficulties with HM Revenue & Customs (HMRC).
- The funds had been released to a director's private bank account instead of the company one and only after this was the company asked to raise an invoice for this amount.
- He does not agree that he has gained financially as his pension has diminished and Clifton was failing to communicate with him.
- It was not explained that this was a high risk strategy – Mr B thought it was medium risk.
- He does not agree that he has gained financially as his pension has diminished and Clifton has charged exceptionally high fees.
- He did not need to ensure the survival of his business as it was a new company.
- Cash flow difficulties for the company have been caused.

A copy of Clifton's file was requested which was provided. Mr B did not make any further comments within the time scale we allowed. Very recently we have been told that a new representative may be appointed to deal with the matter on Mr B's behalf.

In an effort to progress the matter I am issuing provisional decisions setting out my current views. I would ask both parties to ensure that any further comments are made by the date indicated above.

my provisional findings

I have considered all the available evidence and arguments from the outset, in order to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I have reached the same conclusions as the adjudicator and broadly for the same reasons.

I would agree with the adjudicator that the arrangement was somewhat unorthodox. However, there was a clear investment strategy here which involved accessing Mr B's pension benefits and using these to fund his business. A domain name was then leased from the SIPP to the company and the income from the lease was to be used to replenish his pension. Unfortunately, the strategy has not worked out as anticipated and Mr B is now in the situation where he has a significantly diminished pension and his company is experiencing cash flow difficulties.

The adjudicator considered that the registration of the SIPP for VAT and the valuation of the domain name were not regulated activities and so did not come within this service's jurisdiction. Further, Clifton arranged for an independent valuation of the domain name to be undertaken, so any complaint about the accuracy or otherwise of the valuation is not a matter which we could consider.

In relation to VAT registration I do not agree that this is something that we could not look into in all circumstances, but seeing as here Clifton was acting solely in an advisory capacity I do not consider that we could consider any complaint against Clifton about the administration of the SIPP or the VAT registration. Any complaint about these matters should be raised with the SIPP administrator or the VAT agent.

I have set out my findings with regard to the advice to enter into the arrangement below. I have concluded, on balance, that the advice given by Clifton was not unsuitable. It is, as I have previously said, a relatively new and uncommon approach to self-investment. I do not consider that this type of investment could be deemed to be suitable for all investors but in Mr B's particular circumstances I am unable to say that it was inappropriate.

I note that Mr B was assessed as having medium attitude to risk and I would generally not classify this strategy as being within that category. But it was geared towards an individual wanting to invest in his or her own company – in many ways, as this was Mr B's own company, he was best placed to assess whether or not it was a prudent investment to make.

It is not now possible to say on what terms Mr B could have secured more conventional lending, or, indeed, if this would have been possible. I am unable to conclude, had Mr B sought more conventional lending – in an environment where banks are reluctant to provide funding without guarantees and relatively high interest is applied to the debt – that he would have been able to have secured finance on more attractive or cheaper terms.

Mr B has said that this business was a brand new start-up venture. I do not dispute that. But I am also aware that Mr B had sought funding advice from Clifton with regards to another company. Clifton issued a funding proposal for that company in June 2009 and within this report explored the possibilities of using a SSAS as a method of funding a move to new premises and new equipment.

The documentation provided by Clifton suggests that another company was the pre-cursor to the company in relation to which the advice was eventually given. This leads me to conclude that, although officially a new company, that company could also be considered as a continuation and expansion of the previous company – albeit under a different name. In addition, Mr B provided a business plan for the new company which indicated that although the company had been dormant, he was satisfied that he had the client base and industry experience to ensure that the venture would be successful.

It is extremely difficult to assess whether or not Mr B could have secured alternative funding for that company. It has been documented by Clifton that this would not have been possible due to the security requirements which could be requested by a bank. I do not consider this to be an unlikely or an unreasonable assumption to make based on the lack of company accounts or credit history.

Whilst Mr B has said that he did not explore this option because of the assurances he was given by Clifton; I am not persuaded that this prevented him from seeking advice elsewhere. What I have also taken into consideration is that this concept of funding was originally discussed in 2009 for another company, but not implemented until 2010 which would have given Mr B enough time to consider other means of funding.

Mr B has gained the ability to access his pension benefits which he could not otherwise have accessed until he took benefits. He has used the benefits of the funds to support his company but he has been unable to replenish his pension fund because of cash flow issues in the company. The primary purpose of a pension arrangement is to provide an income in retirement and this arrangement, to an extent, goes against that. But Mr B has had the benefit of being able to invest these monies in his business, which is his livelihood, and had the arrangement worked out as planned, his pension would have been replenished.

I note Mr B's concerns about what he considers to be a lack of transparency about the fees. However, the recommendation letter does outline the fees payable for the transaction and service provided. A transfer report was issued by Clifton on 25 March 2010 which outlined the risks as well as the costs associated with the arrangement.

Mr B has raised concerns about the validity of these letters and has explained that he did not receive them. However, a considerable amount of the documentation is signed and the documentation that I have reviewed is quite clear about the fees and risks involved.

Although I sympathise with the difficulties Mr B has faced since this arrangement was implemented, I am unable to uphold his complaint for the reasons outlined above.

my provisional decision

I do not uphold the complaint and make no award.

Lesley Stead
ombudsman