

complaint

Mr G has complained about the advice he was given by St Paul's Marketing Limited (an Appointed Representative of Alexander David Securities Limited) to transfer his pension to a self-invested personal pension (SIPP) and invest in an unsuitable investment.

background

The background to the complaint was set out by the investigator in his assessment. Mr G had said he was cold called by St Pauls Marketing Limited offering him a pension review. Mr G said he was told by transferring he could benefit from guaranteed returns and he wasn't made aware of the risks. The investigator said St Pauls Marketing provided Mr G with promotional material relating to an investment in debentures issued by Just Loans.

Mr G opened a SIPP and transferred his personal pension to it in April 2016. The transfer value was £25,199. £24,389 was then transferred to a stockbroking account and the majority of it was invested in the Just Loan debentures.

Mr G, through his representative, complained to Alexander David in June 2018. I understand Alexander David didn't acknowledge or respond to the complaint. The representative subsequently referred it to us. Our investigator asked Alexander David for its files and to provide any other evidence it wanted us to take into account. However, no files or evidence or arguments were received.

The investigator said he thought, from the information provided, that it was likely that St Pauls Marketing had recommended the investment to Mr G. He said it had provided him with all the information about the debentures and the benefits of transferring his existing pensions to the SIPP. He said as St Pauls Marketing had advised Mr G on the investment he had considered whether the advice was suitable for his circumstances at the time.

The investigator said Mr G was in his early 50s and his pension was the only fund he had to rely on in retirement. He said Mr G was a low risk investor and couldn't afford the risk of losing these funds. Taking this into account, the investigator thought investing the pension funds into high risk bonds wasn't in line with Mr G's objectives at the time. He said an adviser providing a recommendation in the best interests of their client, should have identified this.

The investigator said a high-risk investment of this type would be more suitable for an experienced investor with a capacity for loss. He said it was clear that Mr G wasn't such an investor; he had little investment experience or capacity for loss. St Pauls Marketing had arranged the investment for Mr G which was a regulated activity. The investigator said it should have followed the rules set out in COBS. COBS 10.1.2 said:

"This chapter applies to a firm which arranges or deals in relation to a non-readily realisable security, speculative illiquid security, derivative or 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."

Following on from this, COBS 10.2.1 provided:

"(1) When providing a service to which this chapter applies, a firm must ask the client to provide information regarding his 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 for the client.

(2) When assessing appropriateness, a firm must determine whether the client has the necessary experience and knowledge in order to understand the risks involved in relation to the product or service offered or demanded."

The investigator said in his view, if it wasn't for St Pauls Marketing's involvement which wasn't just limited to promotion, its unlikely Mr G would have gone ahead with the investment.

The investigator also didn't think St Pauls Marketing had met its obligations under the regulator's Principles for Business. He noted firms must "*conduct its business with due skill, care and diligence; pay due regard to the interests of its customers and treat them fairly; manage conflicts of interest fairly, both between itself and its customers and between a customer and another client, and take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment.*" However the investigator didn't think St Pauls Marketing had followed these Principles.

The investigator sent his assessment of the complaint to Alexander David. However it didn't provide a response. The investigator wrote to both parties on 19 February 2021 explaining that the complaint would be passed to an ombudsman for review and to make a final decision. No further evidence or arguments were provided. The investigator wrote to both parties again on 4 March 2021. He said that having reviewed the case he thought compensation should be calculated slightly differently to what he'd proposed in his assessment. He set out how he thought it should be calculated. Mr G confirmed he was happy with the revised proposal. No further evidence or arguments were received from Alexander David.

my findings

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 Mr G's original complaint or to the investigator's requests for information. So there's only very limited evidence available to establish what happened at the time of the transfer and investment.

I've carefully considered the evidence that is available, including Mr G's recollections of events. The investigator set out his thoughts on the matter in his assessment, and Alexander David hasn't disputed what he said or provided any further evidence or arguments.

I'm satisfied, on the balance of the evidence that's available, that St Pauls Marketing was involved from the outset and following its input Mr G transferred his pension to the SIPP and invested in the debentures. In my experience it's unusual for someone of Mr G's background and experience to want to transfer an existing pension in order to invest in this type of investment without prompting. I think it was unlikely to have happened without the involvement of St Pauls Marketing. I'm satisfied that it initiated the transfer and investment in the debentures. It was aware of where the investment was going to be made and facilitated it.

Mr G said St Pauls Marketing had recommended that he transfer his pension when referring his complaint to us. The investigator thought St Pauls Marketing had recommended the

investment to Mr G. The firm hasn't disputed this. In all the circumstances and on the balance of the limited evidence, I think it's more likely than not that St Pauls Marketing did advise Mr G to transfer and invest in the debentures. And given the significant risks presented by the investment, I don't think it was suitable for Mr G in his circumstances, particularly given he has said that he was a low risk taker with no investment experience.

However, even if St Pauls Marketing didn't give advice to Mr G I think the evidence shows it was involved in arranging the transaction. It was the promoter for the debentures, but I'm satisfied, on the limited evidence, that it went beyond just promoting it and was involved in arranging the investment.

The debentures were a non-readily realisable security. As the investigator said, COBS 10 required St Pauls Marketing to assess Mr G'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 him.

The investigator said Mr G had little investment experience and Alexander David hasn't disputed this. I've seen no evidence of Mr G having a history of making this type of investment. The debentures presented significant risks and were speculative. In my view they weren't appropriate for Mr G given his 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 weren't suitable or appropriate for Mr G. Like the investigator, I also don't think the firm met its obligations under the regulator's Principles for Business, in particular that it didn't pay due regard to the interests of Mr G and treat him fairly, or take reasonable care to ensure the suitability of its advice as I think Mr G was entitled to rely on its judgment.

I'm satisfied that if St Pauls Marketing hadn't advised Mr G to transfer and invest in the debentures, or if it had told him they weren't suitable or appropriate for him, he wouldn't have transferred and invested in them.

Accordingly, I'm satisfied that St Pauls Marketing's failures caused Mr G to transfer and invest in a product that he would otherwise not have invested into. I'm satisfied its failures caused the losses that Mr G has claimed.

my final decision

My final decision is that I uphold Mr G's complaint.

I order Alexander David Securities Limited to calculate and pay compensation to Mr G on the following basis.

fair compensation

In assessing what would be fair compensation, my aim is to put Mr G as close as possible to the position he would probably now be in if he had been given suitable advice. Mr G's existing pension was invested in funds that provided a greater degree of risk than Mr G has indicated he was willing to take. I think with suitable advice Mr G would have remained in his existing pension scheme, but switched to an appropriate fund. So I think Mr G would have invested differently. It's not possible to say precisely what he would have done, but I am

satisfied that what I have set out below is fair and reasonable given Mr G's circumstances and objectives when he invested.

what should Alexander David do?

To compensate Mr G fairly Alexander David should compare the performance of Mr G'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.

Alexander David Securities Ltd should also pay any interest as set out below. If there is a loss, Alexander David Securities Ltd should pay into Mr G'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 Ltd shouldn't pay the compensation into the pension plan if it would conflict with any existing protection or allowance.

If Alexander David Securities Ltd is unable to pay the compensation into Mr G's pension plan, it should pay that amount direct to him. 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 Mr G's actual or expected marginal rate of tax at his selected retirement age.

I think Mr G 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 Mr G 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 Securities Ltd should:

- Pay Mr G £250 for the distress and inconvenience I'm satisfied the matter has caused him.
- Provide details of the calculation to Mr G in a clear, simple format.
- Income tax may be payable on any interest paid. If Alexander David Securities Ltd considers that it is required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr G how much it has taken off. It should also give Mr G a tax deduction certificate if he asks for one, so he 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 interest a year from the date of decision to date of settlement if settlement isn't made within 28 days of Alexander David being notified of Mr G's acceptance of this decision

Actual value

This means the actual transfer value of the SIPP at the end date.

If, at the end date, the debenture is illiquid (meaning it cannot be readily sold on the open market), it may be difficult to find the *actual value* of the SIPP. So, the value should be assumed to be nil to arrive at fair compensation. Alexander David Securities Ltd should take ownership of the illiquid investment by paying a commercial value acceptable to the pension provider / administrator. This amount should be deducted from the compensation and the balance paid as above.

If Alexander David Securities Ltd is unable to purchase the debentures its value should be assumed to be nil for the purpose of calculation.

Alexander David Securities Ltd may wish to require that Mr G provides an undertaking to pay it any amount he may receive from the debentures in the future. That undertaking must allow for any tax and charges that would be incurred on drawing or receipt from the pension plan. Alexander David Securities Ltd will need to meet any costs in drawing up the undertaking.

Fair value

This is what the sum transferred from the pension provider would have been worth at the end date had they grown in line with the benchmark.

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.

SIPP Fees

The investigator recommended that Alexander David pay five years' worth of SIPP fees if it couldn't buy the investment. I think this is reasonable as Mr G hasn't got the opportunity to close the SIPP or switch to another pension if the illiquid debenture remains in it. So *if* Alexander David Securities Ltd can't buy the investment and it remains illiquid, it should pay Mr G an amount equal to five years of SIPP fees based on the current tariff. This is in addition to the compensation calculated using a nil value for the investment.

Why is this remedy suitable?

In all the circumstances, I don't think Mr G would have transferred with suitable advice. But I think it's likely he would have switched to lower risk funds if suitable advice had been given. I don't know exactly how he would have invested, but I think the index I have outlined above is an appropriate benchmark and is a reasonable proxy for the level of risk that Mr G was willing and able 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 Mr G's risk profile was in between, in the sense that he was only prepared to take a limited level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mr G into that position. It doesn't mean that Mr G 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 Mr G could have obtained from investments suited to his objective and risk attitude.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 22 April 2021.

David Ashley
ombudsman