Financial Ombudsman Service

complaint

Mr A's complaint relates to the investment advice he received from Sanlam Life & Pensions UK Limited. Mr A was advised to invest a lump sum of £50,000 into its Income Programme ('the Programme') and make regular withdrawals. Through his representative, he complains that this recommendation was unsuitable.

background

I issued a provisional decision in April 2013. My provisional finding was that the complaint should be upheld. A copy of my provisional decision is attached, and forms part of this decision.

Mr A's representatives accepted my provisional decision, and did not make any further submissions for me to consider.

Sanlam did not accept my provisional findings. It said, in summary:

- The level of income taken was Mr A's decision.
- The payments ceased after only five months.
- Mr A had the £50,000 to invest, and the information available shows that this was only a third of his available cash.
- The mortgage application was made some months after the advice was provided.
- It does not know if Mr A was considering applying for the mortgage at the time the sale occurred or if its advisor was aware of this.
- It would appear likely that the withdrawal of over half the investment amount six months after the investment was made was due to Mr A buying a house.
- There is not sufficient information available to fully understand Mr A's investment experience or plans at the time advice was given.
- It does not agree with the proposed compensation methodology. The investment was only held for a short term. The basis for redress should therefore be the Bank of England base rate, not investment growth.

my findings

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

My provisional findings were that the available evidence was sufficient to call into question the suitability of an investment into the Programme for Mr A, and that I did not consider he had been given a sufficient explanation of the risks involved with using his investment in the Programme to generate the income he required. I have not been persuaded to alter these findings by Sanlam's response to them.

Sanlam has said that it was Mr A's choice to take income at the level he did. But it was acting as his advisor and was therefore responsible for ensuring that the investment was appropriate to his objectives and giving him appropriate warnings. I note that, in its response, Sanlam itself has recognised that Mr A would have been better advised to retain cash to provide income in the short term rather than using his investment in the Programme. Although the income withdrawals ceased after five months Mr A then instead withdrew a large amount from his investment in the Programme – so I do not think this action alters the suitability of the original advice.

In any event, if Mr A had been insistent on withdrawals at the level taken, I would have expected him to have been warned of the high risk of capital depletion and given an adequate explanation of the level of growth that would be required to meet his needs. I am not satisfied that such warnings or explanations were given. And I consider that if they had been, Mr A would not have made the investment into the Programme.

In relation to the mortgage, the fact-find completed by Sanlam in June 1989 records mortgage payments of £460 and an outstanding mortgage amount of approximately £38k. The documentation Sanlam has provided shows that Programme commenced in mid July 1989. I am therefore satisfied that Mr A did have a mortgage at the time the advice to invest in the Programme was given, and remain of the view that this ought to have been taken into consideration.

In summary, my findings remain as given in my provisional decision, which I now confirm as final.

In relation to compensation, I think Mr A would have invested differently, but it is not possible to say *precisely* what he would have done differently. Mr A may have wanted to achieve a reasonable return without risking too much of his capital, but with some flexibility and without investing for the longer term. Overall I am satisfied that comparison to a return equivalent to 1% above the Bank of England base rate is a fair measure in the circumstances. This is not intended to replicate a specific investment return. It is simply the sort of return I think Mr A could have obtained otherwise.

my final decision

For the reasons given, I uphold the complaint. Sanlam Life & Pensions UK Limited should pay compensation to Mr A of D + E where: -

- A = a return of the sum invested in the Programme, less any amounts paid out by way of withdrawals, distributions of capital or before-tax income;
- B = a return on the sum by way of capital growth equivalent to 1% more than the Bank of England base rate compounded yearly, from the date of investment to the date of surrender;
- C = the amount received when the plan was surrendered;
- D = A +B – C, representing the investment loss to the date of surrender; and
- E = interest on D, at 8% simple, from date of surrender to the date of payment.

The date of surrender should be assumed to be the date Mr A made his final withdrawal from the Programme. Any withdrawal or income payment that Mr A received before then should be deducted from the calculation at the point it was actually paid so it ceases to accrue any return from that point on.

John Pattinson
ombudsman

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PROVISIONAL DECISION

I have carefully considered the relevant information about this complaint. Having looked closely at the evidence, I am considering departing substantially from the conclusions reached by the adjudicator.

Subject to any further comments and evidence that I receive by 10 June 2013, I intend to issue a final decision along the following lines. Final decisions will be published. To prevent the consumer being identified, he will be referred to as Mr A.

complaint

Mr A's complaint relates to the investment advice he received from Sanlam Life & Pensions UK Limited ('Sanlam'). Mr A was advised to invest a lump sum of £50,000 into its Income Programme ('the Programme') and make regular withdrawals. Through his representative, he complains that this recommendation was unsuitable.

background

Mr A's complaint was initially considered by an adjudicator who, following an investigation, concluded that it should not be upheld. The adjudicator said, in summary:

- It was fair for Sanlam to have relied upon the information provided to it by Mr A
- This information recorded that Mr A had £150,000 on deposit
- Taking this into account, in conjunction with the other available evidence, he did not feel that the investment in the Programme was unsuitable for Mr A

Mr A's representative did not accept the adjudicator's conclusions. It said, in summary:

- It is highly unlikely that Mr A was a sophisticated investor. If he was, he would have considered other options
- It needs to be considered that interest rates were high at the time of advice. It would have been more sensible for Mr A to have put his funds on deposit and taken withdrawals
- The fact that Mr A remortgaged his home after taking out the investment shows that he did not have access to other capital
- The actions of Mr A suggest that he did not fully understand the investment

my provisional findings

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

Mr A was advised to invest £50,000 into Sanlam's Income Programme, which invested into units of a collective fund or funds. The Programme had a 5% initial charge, and ongoing charges of 0.75% per annum for management of the Programme (levied by Sanlam) and 0.75% to 1.5% per annum for fund management (levied by the fund manager). Income payments were met by cancelling (i.e. selling) units from within the Programme.

Mr A was advised to immediately take income of £500 per month from the Programme, which was equivalent to 12% per annum of the sum invested, before charges. If the initial and ongoing charges are taken into account, the level of growth required to meet the £500 per month withdrawals was significantly higher than 12% per annum. The Programme would therefore have had to have shown significant and consistent growth from the outset to fund the withdrawals without significantly depleting the capital invested into it. As large withdrawals were to be taken immediately, it was possible that capital would be quickly depleted and that the required percentage return to meet the £500 per month income would increase significantly. In other words, it was possible (and probable) that making an investment in the way that Sanlam advised would result in Mr A requiring a return that was not realistically achievable and his capital being quickly depleted.

I am not satisfied that Mr A was made sufficiently aware of the risk of capital depletion or that he was given an adequate explanation of the level of growth that would be required from his investment in the Programme to meet his needs. I consider that if Mr A had been given sufficient risk warnings and explanations he would not have entered into the investment, as these would have shown the extent of the risk of capital depletion and the very high level of return required. The illustrations provided at the point of sale show the impact of income being taken at 5% at growth rates of 7% and 10.5% per annum, but not the impact of taking income at almost two and a half times that rate which, at the growth rates of 7% and 10.5% per annum, would have shown Mr A the possibility of significant depletion of his capital.

I also do not consider that it can be safely concluded that the arrangement was suitable for Mr A, or that sufficient consideration was given to alternative options. There is limited information in the fact-find completed at the time Sanlam gave advice, but the information it does contain is sufficient to question the suitability of the advice it gave. Assuming Mr A did have £150,000 cash available to him (I acknowledge that this is disputed) why did he need to invest a third of that to generate income at such a high rate and take the significant risk that entailed? If he had a mortgage of £38,000 with £460 monthly payments at a rate of 13.75% why was consideration not given to the repayment of this, which seemingly would have removed his income requirement? Also, the fact-find records Mr A having net earnings of £3,800 per month as a private dentist. This has subsequently been amended, but if Mr A was able to work as a private dentist, why did he need to take a significant risk to generate £500 per month income? Finally, Mr A was in his early thirties and had no recorded investment experience, so a large risk-based investment was unlikely to have been appropriate for him, and his capacity for understanding it may have been limited. Overall, I am not persuaded that the recommendation was suitable for Mr A.

In summary, my provisional findings are that Mr A was not given an adequate explanation of the nature of his investment in the Programme and its associated risk, and that it was not a suitable recommendation for him.

my provisional decision

For the reasons I have given and subject to any further submissions I may receive from the parties, my provisional decision is that I uphold the complaint

Sanlam Life & Pensions UK Limited should pay compensation to Mr A of D + E where: -

- A = a return of the sum invested in the Programme, less any amounts paid out by way of withdrawals, distributions of capital or before-tax income;
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John Pattinson
ombudsman