complaint

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

background

The background and circumstances of Mrs 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 Mrs B's complaint.

Mrs B's representative responded on her 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 Mrs B complained.
- Mrs B has said that her 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 Mrs 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 Mrs 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 Mrs 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 Mrs 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. Mrs B's complaint has been made against Clifton and I can only consider Clifton's (advisory) role in the matter. It is up to Mrs B if she 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 Mrs 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 Mrs B's company. The report also contained a number of risk warnings. As I have said elsewhere, Mrs B was best placed to assess the current and future viability of the company.

I note Mrs B says that she did not receive the recommendation letters. There is a considerable volume of documentation, much of which is signed by Mrs B. I cannot say with any certainty now whether other, unsigned, documents were received. But I find it difficult to see that Mrs 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 her.

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

As to affordability, it was Mrs B's company so she 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 – Mrs B now says that she 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, Mrs B would have been aware that it might be open to her to raise business capital by another route. Given that there was a year between the proposal first being discussed and Mrs B going ahead she 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 Mrs B would have been alerted to the situation by annual statements for the SIPP but I note she 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 Mrs B, if she had not received any statements for some time, would have contacted the SIPP provider to request them.

But that (and arguments as to whether Mrs 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 Mrs B's complaint being made and her relationship with Clifton deteriorating. All in all I think it would have been apparent to her fairly early on that Clifton was not providing on going advice and that she would need to seek advice elsewhere. After Mrs 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

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

background

Our adjudicator wrote to Mrs 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 Mrs B's company.

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

Mrs B did not agree and said, in summary, that:

- She was looking to set up a new company in 2010 and was advised that funds could be raised via her pension. She was also told that it was not worthwhile looking elsewhere for funding.
- She never received the recommendation letter and may have considered alternative funding had the letter been received.
- She was expecting a small self-administered pension scheme (SSAS) and a loan not a SIPP.
- Registering the SIPP for VAT was incorrect and she 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's and only after this was the company asked to raise an invoice for this amount.
- Clifton was failing to communicate with her.
- Clifton had not explained that this was a high risk strategy – Mrs B thought it was medium risk.
- She does not agree that she has gained financially as her pension has diminished and Clifton has charged exceptionally high fees.
- She did not need to ensure the survival of her business as it was a new company.
- Cash flow difficulties for the company have been caused.

Mrs B asked for a copy of Clifton's file which was provided. Mrs B did not make any further comments within the time scale we allowed. Very recently she has told us that she may appoint a new representative to deal with the matter on her 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 Mrs B's pension benefits and using these to fund her 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 her pension. Unfortunately, the strategy has not worked out as anticipated and Mrs B is now in the situation where she has a significantly diminished pension and her 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 Mrs B's particular circumstances I am unable to say that it was inappropriate.

I note that Mrs 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 Mrs B's own company, she 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 Mrs B could have secured more conventional lending, or indeed, if this would have been possible. I am unable to conclude, had Mrs 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 she would have been able to have secured finance on more attractive or cheaper terms.

Mrs B has said that this business was a brand new start-up venture. I do not dispute that. But I am also aware that Mrs 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, Mrs B provided a business plan for the new company which indicated that although the company had been dormant, she was satisfied that she had the client base and industry experience to ensure that the venture would be successful.

It is extremely difficult to assess whether or not Mrs 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 Mrs B has said that she did not explore this option because of the assurances she was given by Clifton; I am not persuaded that this prevented her 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 Mrs B enough time to consider other means of funding.

Mrs B has gained the ability to access her pension benefits which she could not otherwise have accessed until she took benefits. She has used the benefits of the funds to support her company, but she has been unable to replenish her pension 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 Mrs B has had the benefit of being able to invest these monies in her business, which is her livelihood, and had the arrangement worked out as planned, her pension would have been replenished.

I note Mrs B's concerns about what she 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.

Mrs B has raised concerns about the validity of these letters and has explained that she 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 Mrs B has faced since this arrangement was implemented, I am unable to uphold her complaint for the reasons outlined above.

my provisional decision

I do not uphold the complaint and make no award.

Lesley Stead
ombudsman