

complaint

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

background

I issued my provisional decision on this complaint on 11 August 2020. The background and circumstances of the case and the reasons I was minded to uphold it were set out in that decision. A copy is attached and it forms part of this final decision.

I asked both parties to send me any further evidence or arguments that they wanted me to consider.

Alexander David Securities Limited didn't provide any further evidence or arguments.

Ms C said she was happy to proceed with the outcome.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I've seen no reason to depart from the findings set out in my provisional decision to uphold the complaint.

my final decision

For the reasons set out in my provisional decision attached, my final decision is that I uphold Ms C's complaint.

I order Alexander David Securities Limited to calculate and pay compensation to Ms C as set out in my provisional decision.

Under the rules of the Financial Ombudsman Service I'm required to ask Ms C to accept or reject my decision before 18 October 2020.

David Ashley
Ombudsman

Copy of Provisional decision

complaint

Ms C has complained about the advice she was given by St Paul's Marketing Limited (an Appointed Representative of Alexander David Securities Limited) to transfer her 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. He explained Ms C had said she was cold called and offered a pension review which she accepted. Ms C had said she was promised returns of between 8.25% and 8.75% by representatives of St Pauls Marketing, which she was told was better than her existing stakeholder plan.

Ms C applied for the SIPP in October 2016. Ms C then received a letter from the SIPP provider in November 2016 confirming that £16,384 had been transferred to the new SIPP.

Ms C, through her representative, complained to Alexander David in 2018. I understand Alexander David didn't acknowledge or respond to the complaint. The representative subsequently referred the complaint to us.

One of our investigators asked Alexander David for its files and to provide any other evidence it wanted us to take into account. Despite reminders, he received no response. The investigator therefore assessed the complaint on the evidence that had been presented.

The investigator noted that Ms C had alleged that she wouldn't have transferred her pension and invested in the Just Loans debentures if not for St Pauls Marketing recommending and arranging it. Alexander David hadn't disputed or commented on her complaint. The investigator thought Ms C's version of events seemed credible and was consistent with the limited evidence provided by third parties. He thought, based on what Ms C had said had happened, St Pauls Marketing had made a personal recommendation to her.

The investigator said it was clear a direct comparison had been made between Ms C's existing plan and the prospective investment with Just Loans in the SIPP, taking into consideration the performance of the existing plan and Ms C's objectives. He said it was difficult to imagine such a conversation taking place without a recommendation to proceed with the 'better' option, inferred or otherwise. He thought it was likely a recommendation had been made by St Pauls Marketing to Ms C.

The investigator didn't think it was a suitable recommendation. Ms C was in a stakeholder plan with 1% charges invested in a UK Equity Index Lifestyle fund. The fund was diversified into lower risk assets as she approached retirement, with her pension spread between fixed interest fund and cash at the time the fund was switched away in 2016. Ms C had said she was a low risk client, could not afford to lose any of her pension, and had no capacity for loss. Alexander David hadn't disputed this and the investigator thought it was credible.

By comparison, the Just Loans debenture was issued by a single company which the investigator understood was concerned entirely with peer to peer lending. The company was only a few years old at the time of advice with little in the way of a track record. Ms C's entire retirement provision was invested in it. The investigator said the investment was speculative and unsuitable for Ms C. He thought the transfer and investment were both unsuitable.

The investigator said that even if it was argued St Pauls Marketing didn't make a personal recommendation, as it was arranging the transaction and making a direct offer it was required to carry out an appropriateness test in accordance with the Financial Conduct Authority's (FCA) Conduct of Business rules (COBS); the debentures were a non-readily realisable security. Had this been done, St

Pauls Marketing would have likely determined that Ms C didn't have the necessary experience and knowledge to understand the risks involved in the Just Loans investment.

The investigator went on to say that he also thought the firm had failed to treat Ms C fairly or act in her best interests as required by the FCA's Principles and COBS 2.1.1. Ms C was an inexperienced investor with very little capacity for loss. The investigator thought that any competent financial professional would have recognised that this transaction was unlikely to be in her best interests. And without the firm's involvement this wouldn't have happened.

The investigator thought that the complaint should be upheld. He sent his assessment of it to Alexander David. However it didn't provide a response. The investigator subsequently wrote to both parties on 6 January 2020 explaining that the complaint would be passed to an ombudsman for review and to make a final decision. No further evidence or arguments have been provided.

my provisional 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 Ms C's original complaint. Neither did it co-operate with our investigation; it didn't provide its business files or respond to the investigator's assessment of the complaint. There's only very limited evidence available to establish what happened at the time of the transaction.

I've carefully considered the evidence that is available including Ms C's recollection of events. Alexander David hasn't disputed what Ms C said in her complaint to it, or what the investigator said in his assessment.

I'm also mindful that this is one of a number of complaints we have received and which I have seen against St Pauls Marketing Limited; all of a similar nature, involving seemingly similar circumstances and the same investments.

Clearly I need to consider each complaint on its own facts and the evidence provided in each particular case. But I've noted that what Ms C has said about St Pauls' role is consistent with what other complainants have described. So I think what she has said is plausible. And taking everything into account, I have found it credible.

In my experience it's unusual for someone of Ms C's background and experience to transfer and invest in this type of investment without prompting. I think it was unlikely to have happened without the involvement of St Pauls. I'm satisfied that it initiated the investment in the debenture. It was aware of where the investment was going to be made and facilitated it.

Ms C has said St Pauls told her she would make better returns by transferring her pension; the investigator said he thought it likely St Pauls had recommended the transaction and it wasn't suitable for Ms C, and the firm hasn't disputed this. In all the circumstances, I think it's more likely than not that advice was given.

The investigator also said he thought St Pauls was involved in arranging the transaction and that it was required, but failed, to assess its appropriateness in accordance COBS 10. He didn't think the debentures were appropriate for Ms C.

Again, St Pauls hasn't disputed this. I agree with the investigator that it's more likely than not that St Pauls arranged the investment. It was the promoter for the debenture, but I'm satisfied, on the limited evidence that it went beyond just promoting it and was involved in arranging the investment (and recommending it). The debenture was high risk and speculative and clearly wasn't appropriate for Ms C given her background, knowledge and circumstances.

Ms C has said she was a low risk client, she was renting a property, had no cash savings and no other pension provision. She has said she had no previous investment experience and hadn't got capacity for the loss of the pension. I think it was clear that the debenture wasn't suitable or appropriate for Ms C and this should have been clear to St Pauls. Like the investigator, I don't think the firm treated Ms C fairly or acted in her best interests as required by the Principles and COBS 2.1.1. I'm satisfied that if St Pauls hadn't advised Ms C to transfer and invest in the debenture or if it had told her it wasn't appropriate for her she wouldn't have transferred and invested in it.

Accordingly, I'm satisfied that St Pauls' failures caused Ms C to transfer and invest in a product that she would otherwise not have invested into. It follows that I'm satisfied its failures caused the losses that Ms C has claimed.

my provisional decision

My provisional decision is that I uphold Ms C's complaint. I intend to order Alexander David Securities Limited to calculate and pay compensation to Ms C on the following basis.

fair compensation

In assessing what would be fair compensation, my aim is to put Ms C as close as possible to the position she would probably now be in if she had been given suitable advice.

Ms C was approaching retirement age and her existing pension was invested in a lifestyle fund. Her pension had been switched to cash and fixed interest and so was suitable for her circumstances and risk profile at that time. Accordingly, I think suitable advice would have been to stay with her existing pension provider and remain in the same fund. So I think Ms C would have still been with her original provider and invested in the same funds but for the actions of St Pauls.

what should Alexander David do?

To compensate Ms C fairly Alexander David should:

Compare the performance of Ms C's investment with that of the benchmark shown below (her original scheme). 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 Ms C'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 Ms C's pension plan, it should pay that amount direct to her. 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 Ms C's actual or expected marginal rate of tax at her selected retirement age.

I think Ms C is likely to be a basic rate taxpayer at her selected retirement age, so the reduction should equal the current basic rate of tax. However, if Ms C 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 Ms C £250 for the distress and inconvenience I'm satisfied the matter has caused her.
- Provide details of the calculation to Ms C 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 Ms C how much it has taken off. It should also give Ms C a tax deduction certificate if she asks for one, so she 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	Ms C's original pension and the funds she was invested in at the date she transferred s out of it	Date of transfer	Date of decision	8% simple a year from date of decision to date of settlement if settlement isn't made within 28 days of Alexander David being notified of Ms C'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 Ms C provides an undertaking to pay it any amount she 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 the notional transfer value of Ms C's original plan had it not been transferred.

Any additional sum paid into the SIPP by Ms C 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 Ms C 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 or it can't be sold and it remains illiquid, it should pay Ms C 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?

Ms C has said she was a low risk investor and I think her circumstances were consistent with someone who only had limited capacity for risk. In the circumstances, I don't think Ms C would have transferred without St Pauls' involvement and her existing pension and funds were suitable for her circumstances.

David Ashley
ombudsman