

complaint

Mr N's complaint concerns the advice he received from Martin-Howard Consultants to set up an Annuity Growth Account ("AGA"). Mr N says the advice was flawed, as the AGA did not meet his cautious attitude to risk, and the high risk of the plan was not made clear to him. He is also unhappy that Martin-Howard Consultants did not subsequently review the plan.

background

I issued a provisional decision dated 27 June 2014 setting out my preliminary views on Mr N's complaint. The provisional decision set out the background facts and the evidence on which I was relying in significant detail. Both parties have had the opportunity to consider my provisional decision and seek copies of any documents referred to which were not already in their possession. They have both provided their responses. Therefore, rather than repeat the background facts and evidence relied on here, I will focus in this final decision primarily on the points raised by the parties in response to my provisional conclusions.

In summary, my provisional decision was that Mr N's complaint about the advice he received from Martin-Howard Consultants to set up the AGA should not be upheld. I said that the matter was finely balanced, but I was not satisfied that the advice to set up the AGA was unsuitable. I reached this conclusion after considering Mr N's personal circumstances at the time of the advice, his understanding of the options available to him and the risk warnings he had received, his attitude to investment risk, and his capacity to bear potential loss.

However, I also noted that the advice to set up the AGA had been based on a commitment from Martin-Howard Consultants to provide Mr N with regular reviews of the invested portion of the fund. The adviser had indicated that he would issue Mr N with a report on a six-monthly basis, but I could see no evidence that such reports had been provided, despite Mr N chasing for them. There was evidence that the adviser had obtained valuation reports from the provider, which indicated that he had been keeping the invested funds under review. However, any review undertaken did not appear to have been communicated to Mr N, and no recommendations were made between the date of the initial investment and the date the business of Martin-Howard Consultants was sold to another firm.

I therefore explained that I was minded to partially uphold Mr N's complaint against Martin-Howard Consultants. I considered that an award for distress and inconvenience was appropriate, based on the failure to provide him with regular reviews of his AGA investments, or to communicate the outcome of any reviews to him. I intended to award £500 for this.

I did not consider that an award for financial loss was appropriate. The evidence showed that the adviser had continued to monitor Mr N's AGA performance. Given how widespread the economic downturn had been over the relevant period, I considered that I could not say that if reviews had taken place (by which I was referring to proper reviews involving communication with Mr N), this would have resulted in any changes to the investment strategy in the early part of the five-year investment term. I was not satisfied that I could conclude that changes to the fund strategy should have taken place in the first 18 months of the investment, or that any fund switches would have put Mr N in a better financial position.

the parties' responses to my provisional decision

The key points raised by Mr N were, in summary:

- The provisional decision had stated that the 'open market option' was available to Mr N at the end of the five-year term of his AGA. Although Martin-Howard Consultants had previously explained that this option would be available, this turned out not to be the case. His current adviser had tried hard to negotiate this route but was unable to do so.
- He disagreed that the level of his personal savings was indicative of the risk he was prepared to take. He is, in the main, very cautious and does not gamble. His current financial adviser has assessed him as having a cautious attitude to risk, and he believed this had always been the case. He could not understand why having carefully accrued savings, I assumed that he would gamble on a pension investment.
- His apparent failure to alert the adviser to the fact that there would be significant costs involved in moving house was based on him not being aware that this was necessary. The adviser had also made no enquiries. The house he and his wife had moved to required very substantial improvement. This has consumed, as they had expected, a considerable amount of their savings and his pension lump sum.
- My provisional decision had said that if Mr N was not prepared to take any risk, or only minimal risk, with his pension, he would have opted for the security of a lifetime annuity rather than the AGA. Mr N explained in response that he did not see a significant difference in risk between the two options as Martin-Howard Consultants was "*to continually optimise the investment portfolio in the AGA policy.*" He considered that any risk would be further minimised by the involvement of the adviser and regular recommendations of any changes the adviser considered necessary. However, without the reviews the AGA had been transformed to "*a dangerously high risk investment*". Mr N would never have agreed to the AGA on this basis.
- Mr N was troubled by my view that as he had been a trustee of an occupational pension scheme, it was reasonable to expect him to have had some knowledge of pensions and investments (whilst also noting that Mr N was no pensions expert). He did not accept that he had a greater understanding and knowledge of the pensions business as a result of having been a pension scheme trustee. He noted that as he had relied on unbiased professional advice, he had no need to be involved further.
- He accepted that Martin-Howard Consultants could not have *fully* foreseen the global economic downturn, but thought it was far better placed (than Mr N) to have seen the indications sooner, and the financial consequences for his investments. It was difficult to justify why Martin-Howard Consultants appeared to have taken no action to minimise the impact on his investments. He was aware that it had taken a very significant fee for delivering this service.
- Martin-Howard Consultants did not provide the service it had promised and which Mr N was expecting. Martin-Howard Consultants was to conduct regular investment performance analysis and communicate necessary changes. This did not happen. When contacted, Martin-Howard Consultants indicated that no action was necessary.
- Mr N is concerned about other advice he received from Martin-Howard Consultants – including a transfer from an employer's pension scheme. Overall, he considers that his own financial requirements were not Martin-Howard Consultants' highest priority.

- The £500 I had proposed to award as compensation for distress and inconvenience does not recognise or redress the failure to provide regular reviews and advice as promised to maximise the investment. Mr N is not certain of the amount Martin-Howard Consultants will have received for the advice given (he believed this to be in the region of £2,000) but based on his estimate and my award he will feel that he will have paid around £1,500 for a broken promise.

Martin-Howard Consultants' main points were, in summary:

- Mr N had been recommended a combination of guaranteed annuities and an AGA. Full consideration was given to his wishes in making the recommendations.
- The investment strategy proposed for the AGA was designed over a five year period and it would have been most unusual to change that within the first 12 months. In practice, due to economic conditions in 2007/08, it is unlikely any benefit would have arisen from 'fine tuning' the eight funds in which Mr N was invested.
- Although the intention was to convey the outcome of reviews to Mr N, this did not happen. Nonetheless, it did not accept any liability for loss as a result of its failure to communicate its internal reviews to Mr N.
- It agreed to pay the award I had proposed for the failure identified.

In view of Mr N's comments about the lack of availability of an open market option at the end of the AGA term, one of our adjudicators contacted Mr N's annuity provider (with whom he previously held the AGA) for clarification on this issue. The provider explained that it did allow the open market option, so Mr N's fund *could* have been transferred to another provider. However, that was subject to the other provider being prepared to accept the transfer of a fund which has already been subject to an annuity arrangement. The particular provider chosen by Mr N's new financial adviser decided it was unable to accept the transfer, so Mr N ended up taking the lifetime annuity with his existing provider.

This was clearly unfortunate for Mr N. It appears that Martin-Howard Consultants was not wrong in saying this option was available under the terms of the AGA, but equally it appears that Mr N was not able to benefit from this option, due to restrictions imposed by the provider whose open market offer Mr N wanted to accept.

The adjudicator also asked the AGA provider to confirm the commission paid to Martin-Howard Consultants for advising Mr N. It said that initial commission of £1,668.65 was paid, and then on-going 'trail' commission of 0.5%.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having carefully considered the responses of both parties, I have not been persuaded that any points raised should change the preliminary conclusions I reached, as set out in my provisional decision.

I am unable to comment on the advice Mr N received to transfer from an occupational pension scheme. I understand Mr N has had a decision from another ombudsman confirming that this service is unable to investigate that complaint. This was due to it being referred to us after the time limits allowed under the rules governing our jurisdiction.

I note what Mr N has said about being a very cautious person, who does not gamble. I also note that he says that his adviser now has assessed that he has a cautious attitude to risk, and he believes that this has always been the case. Mr N does not appear to deny that he understood the nature of the product or that he received information about the risks. Instead, I understand his case to be that he thought the risk of the AGA product providing him with a lower income in the future (when compared to the income available to him at that time from a lifetime annuity) was minimised, as his adviser was going to optimise his investments.

I do have some sympathy with Mr N's perspective. However, I do not consider that it was entirely reasonable for him to take the view that there was effectively no risk (or minimal risk) of the AGA product not delivering him an equivalent or higher income in the future, such that he could consider it an appropriate course of action for him as a 'very cautious person'. In reaching this view, I have taken into consideration that Martin-Howard Consultants had explained to Mr N that the option with the *least* risk was the lifetime annuity, providing a guaranteed income for life. The adviser had obtained quotes for Mr N for a lifetime annuity on various different bases, and had explained the different features of each product available in some detail. If Mr N considered himself to have an entirely cautious attitude to risk at the time, it is likely that he would have chosen the least risky option available.

My comment about it being reasonable to expect Mr N to have *some* understanding of pensions and investments as a result of being a pension scheme trustee was made in the context of noting that it appeared from his extensive correspondence with the adviser that he had a good grasp of the information provided to him. I take on board the circumstances in which Mr N became a trustee. Nonetheless, I consider that it would be odd if he had acquired no pensions knowledge whatsoever during the course of performing this function. This position is also not borne out by the level of understanding and engagement he showed in his correspondence with the adviser on the pros and cons of each option available to him.

I do accept that Martin-Howard Consultants put considerable emphasis on the importance of regular reviews of the invested portion of the AGA during its five-year term. This assumed that fund switches would be made periodically, if and when required, in order to optimise Mr N's investment returns. In normal investment conditions, this approach would generally be considered to have a reasonable prospect of creating a successful outcome. However, it is much less clear that regular reviews could prevent loss from occurring in the event of a global economic crisis and the extended period of recession that unfortunately followed.

Mr N's decision to proceed with the AGA, despite his awareness of other less risky options being available, indicates to me that he was prepared to take *some* risk, in exchange for the potential benefit of a higher income in the future. With the benefit of hindsight, it is clear that he would have been better off financially to have taken the lifetime annuity available to him. However, in my view, at the time of his decision, it was reasonable for both he and Martin-Howard Consultants to consider that there was a reasonable prospect that he would financially benefit from the AGA investment.

As explained in my provisional decision, considering whether the advice given to Mr N was *unsuitable* requires me to have regard to his personal and financial circumstances at the time. Mr N appears to continue in his view that the fact that he had significant other savings and investments has no bearing on the suitability of the advice. I disagree. During the advice process, Martin-Howard Consultants sought information from Mr N about his overall financial circumstances, as well as his future plans. Following the adviser's request, Mr N provided a detailed schedule setting out his and his wife's savings and investments, totalling over

£200,000. When combined with Mr N's tax-free cash lump sum from his pensions, this created savings and investments wealth of over £250,000.

I consider that this was a relevant factor that Martin-Howard Consultants was entitled to take into consideration when deciding what options and products might be suitable for Mr N. If I had seen evidence that Mr N had explained to the adviser that he should discount any other savings and investments he and his wife held, because it was their expectation that the majority of it would be spent on substantial property renovations to their future home, then I would have had to consider the advice provided to Mr N about the AGA product in that context.

Three months after Mr N's AGA was set up, Mr N and his wife sold their existing home and bought a new one, costing an additional £22,000. Mr N has said in his response to my provisional decision that the new house required very substantial improvement and refurbishment. He has also said that they have built a conservatory and workshop and undertaken other work outside in order to make the home they wanted for their retirement. He explained that this had consumed a considerable amount of their savings and his pension lump sum, as they had anticipated, and they had not yet finished the work.

The evidence I have seen indicates that Mr N let the adviser know that he expected to require part of his tax-free cash lump sum from his pension to help fund their house move (the adviser recalled a figure of around £30,000 being referred to in conversation, although this is not documented). The evidence does not indicate that the adviser was informed of the scale of Mr N's future housing project. It is of course perfectly possible that at the time, as Mr N had not yet found his future home, he was also not aware of its scale. Overall, I am satisfied that the adviser made appropriate enquiries about Mr N's personal circumstances and future plans. I do not consider the adviser at fault for failing to anticipate this substantial future expenditure, and its impact on the overall wealth of Mr N and his wife.

I therefore consider it reasonable for Martin-Howard Consultants to have offered Mr N a wider range of pension options than might have been suitable for someone without significant other savings and investments. Mr N had also made a number of references to being happy to contemplate equity release on their house in the future to increase their income if required, as he and his wife did not have dependents for whom they were concerned about providing an inheritance.

This, combined with all the other considerations set out in my detailed provisional decision, including the evidence of Mr N's understanding of his options, the risk warnings he received, and the spread of funds selected for the invested portion of the AGA, have led me to conclude that it would not be reasonable to say that the advice given to Mr N was unsuitable at the time. It is for these reasons that I do not uphold this aspect of Mr N's complaint.

Martin-Howard Consultants has said that, internally, reviews of Mr N's AGA investments did take place. It concedes that the intention had been to convey the outcome of those reviews to Mr N, and that this did not happen. I agree with Mr N that the level of service he reasonably expected from Martin-Howard Consultants was not received. This is because, during the advice to invest in the AGA, the adviser had indicated that they would be in regular contact and fund switches would take place as necessary to manage the performance of the investments. Contact to discuss review outcomes did not then occur, in the 18 month period that Martin-Howard Consultants continued in its role as adviser to Mr N.

Mr N feels that he has suffered a financial loss as a result of the poor service he received. He considers that the AGA switched from a low risk investment to being dangerously high risk, as a result of the failure to more actively manage his funds. However, as explained in my provisional decision, I am not satisfied that I can say that Mr N would have been in a better financial position now, if some fund switches had occurred during those first 18 months of the five-year investment term. For this reason, I am unable to conclude that the failure to recommend any fund switches during that period caused Mr N financial loss.

I do however consider that Mr N is entitled to be compensated for any distress or inconvenience caused to him by the poor service he received from Martin-Howard Consultants after the initial advice to set up the AGA, including the failure to adequately communicate with Mr N about the performance of his investments.

I consider that the sum of £500 is appropriate compensation for those failings. I note what Mr N says regarding this being inadequate, given the amount Martin Howard Consultants received in commission. However, this award is not intended to reflect a partial refund of the commission. Having decided that the advice that Mr N received was not unsuitable, it follows that Martin-Howard Consultants was entitled to be paid for that advice. Because I accept that the adviser did do some work to review Mr N's AGA investments periodically, I do not consider that it lost its right to any ongoing commission. However, I do consider that the failure to communicate the outcome of those reviews to Mr N is likely to have caused him some distress and/or inconvenience, especially as he had chased for the information.

my final decision

I uphold this complaint in part.

I direct Martin-Howard Consultants to pay to Mr N £500 for the distress and/or inconvenience it has caused him. I make no other award.

Venetia Trayhurn
ombudsman