

complaint

Mr D complains that he's not been offered sufficient compensation by The On-Line Partnership Limited for the investments he was advised to use in his self-invested personal pension (SIPP).

background

In 2010, Mr D held pension plans valued at just over £186,000. He was advised by On-Line to transfer these into a SIPP. Some months later £80,000 was invested into two unregulated collective investments (UCIS). The same level of investment was made again in the same two funds three months later. The balance of the SIPP was invested in cash and a managed fund.

Mr D complained in 2016 that the investments hadn't been made in line with his attitude to risk. By now both UCIS had been suspended.

On-Line agreed the advice to invest in the two UCIS hadn't been suitable and calculated redress. Mr D didn't think the compensation was sufficient and referred the matter to us.

Our adjudicator reviewed the way On-Line had calculated the redress, but didn't agree this was correct. He said the whole portfolio should be considered unsuitable as it didn't match Mr D's attitude to risk. He said the 20% of the portfolio that had been invested in managed funds didn't offset the 80% of the portfolio that had been invested in higher risk investments. So, he said the redress should compare the value of the whole portfolio against a benchmark which reflected Mr D's cautious attitude to risk.

The adjudicator also said that On-Line should pay five years' worth of SIPP fees to allow a reasonable period of time for the SIPP to be closed and ensure Mr D didn't suffer from indefinite ongoing SIPP fees when he might not be able to stop the plan.

On-Line didn't agree. In summary, it said 20% of the portfolio was invested in mainstream funds and cash. This was suitable for Mr D, and so this part of the portfolio shouldn't be included in any redress calculation. It also argued that it expected the suspended funds to be liquidated in less than five years. It had evidence to show that one of the funds had previously been liquidated three months after it had requested it, and it said the other fund began the process of liquidation the previous year and was expected to complete this in less than three years. So it was prepared to pay three years' SIPP fees in recognition of this.

As the matter remains unresolved, it's been passed to me for review.

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 have come to the same conclusion as the adjudicator and for broadly the same reasons.

On-Line accepts the advice for Mr D to invest in UCIS wasn't suitable. But it argues the compensation should only relate to these funds, and not the SIPP as a whole. Also, it's not reasonable for it to pay five years' worth of SIPP fees. I've considered these points.

In order to decide what Mr D would have done had he not been given unsuitable advice, I must take account of the advice he was given and his circumstances at the time.

It seems Mr D was interested in transferring his pension plans into a SIPP, and this is what prompted him to contact On-Line. Mr D's attitude to risk was recorded as being three out of ten. In my view, this indicates he was a cautious investor. The portfolio that was recommended to him contained 80% high risk UCIS funds. I think the risk posed by these investments was far higher than Mr D's risk profile.

I'm aware part of the SIPP was invested in a managed fund. This was in effect a fund of funds, investing in a range of asset types. I note the fund's factsheet says that it will typically have a preference to lower risk assets, such as bonds. I can therefore understand the point that, taken on its own, this fund fell within Mr D's risk profile.

But it's also important to note this formed only a relatively small proportion of the SIPP portfolio. It didn't play a sufficient part to significantly mitigate the risk to Mr D's pension posed by the UCIS investments. Also, as this was only part of the investment advice that was given, I don't think it's appropriate to single out this fund when considering whether the advice was suitable.

So on the whole I agree with the adjudicator that including some mainstream funds (including cash) within the portfolio didn't make the portfolio suitable overall. I'm therefore satisfied that the whole portfolio should be included in the calculation to reflect the fact that this wasn't in line with Mr D's attitude to risk.

I'm also aware that On-Line has objected to paying for five years' worth of SIPP fees whilst it is trying to liquidate the investments. It has said that it's previously liquidated one of the investments within three months and expects the other one won't take longer than three years, at the most.

As I've noted above, it seems Mr D wished to combine his existing pension plans into a SIPP in 2010. And taking such action wasn't necessarily unsuitable in itself, particularly if a different investment approach had been taken.

But the key issue in this case is that as a result of the advice he was given, Mr D has been left with a SIPP that mostly contains investments which are currently illiquid, and possibly worthless. It's open to question whether any redress payment can be made into the SIPP, so as to bring its value back to what it should be. As such, it's likely Mr D will be left with a product that no longer meets his need to provide for his retirement. In my view, this has been brought about by the unsuitable investment advice he was given.

On balance, I think it's reasonable to use a period of five years to offset the fees which will continue to be incurred by the SIPP. I've noted that On-Line thinks it's likely the investments will be liquidated sooner, and I accept that is possible. But it's also possible it could take longer as there are third parties involved that can't be controlled. I believe five years is a reasonable time frame to use to resolve the complaint.

fair compensation

In assessing what would be fair compensation, I consider that my aim should be to put Mr D as close to the position he would probably now be in if he had not been given unsuitable advice.

I take the view that Mr D would have invested differently. It is not possible to say *precisely* what he would have done differently. But I am satisfied that what I have set out below is fair and reasonable given Mr D's circumstances and objectives when he invested.

what should On-Line do?

To compensate Mr D fairly, On-Line must:

- Compare the performance of Mr D's investment with that of the benchmark shown below and pay the difference between the *fair value* and the *actual value* of the investment. If the *actual value* is greater than the *fair value*, no compensation is payable.

On-Line should also pay interest as set out below.

- If there is a loss, On-Line should pay such amount as may be required into Mr D's pension plan, allowing for any available tax relief and/or costs, to increase the pension plan value by the total amount of the compensation and any interest. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If On-Line is unable to pay the total amount into Mr D'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 total amount should be reduced to *notionally* allow for any income tax that would otherwise have been paid.

The *notional* allowance should be calculated using Mr D's marginal rate of tax at retirement.

For example, if Mr D is likely to be a basic rate taxpayer in retirement, the *notional* allowance would equate to a reduction in the total amount equivalent to the current basic rate of tax. However, if Mr D would have been able to take a tax free lump sum, the *notional* allowance should be applied to 75% of the total amount.

- Pay Mr D £150 for the disruption caused to his retirement planning.
- I don't think the investments within the SIPP were suitable and therefore the SIPP no longer has the advantages it once had. In my view the plan may no longer be appropriate for him. So, I think it's fair that On-Line pay Mr D an upfront sum equivalent to five years' worth of SIPP fees (calculated using the previous year's fees) This gives a reasonable period for the parties to arrange for the SIPP to be closed. There are a number of ways they may want to achieve that but this will give some confidence to Mr D that he will not be subject to further fees.
- Awarding a lump sum for an amount equivalent to five years' fees is a fair balance. It is possible that any residual illiquid unregulated holdings in the SIPP could be removed from the SIPP in fewer than five years. However, overall five years' worth of fees is a fair way to resolve the issue now.

Income tax may be payable on any interest awarded.

investment name	status	benchmark	from ("start date")	to ("end date")	additional interest
SIPP	still exists but two of the funds are illiquid.	for half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	date of investment	date of my decision	8% simple per year from date of decision to date of settlement (if compensation is not paid within 28 days of the business being notified of acceptance)

actual value

This means the actual amount payable from the investment at the end date.

My aim is to return Mr D to the position he would have been in but for the unsuitable advice. This is complicated where an investment is illiquid (meaning it could not be readily sold on the open market) as in this case. It would be difficult to know the *actual value* of the investment. In such a case the *actual value* should be assumed to be nil to arrive at fair compensation. On-Line should take ownership of the illiquid investment by paying commercial value acceptable to the pension provider. This amount should be deducted from the total payable to Mr D and the balance be paid as I set out above.

If On-Line is unwilling or unable to purchase the investment the *actual value* should be assumed to be nil for the purpose of calculation. On-Line may wish to require that Mr D provides an undertaking to pay On-Line any amount he may receive from the investment in the future.

fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, On-Line should use the monthly average rate for the fixed rate bonds with 12 to 17 months maturity as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

Any additional sum paid into the investment should be added to the *fair value* calculation from the point in time when it was actually paid in.

Any withdrawal, income or other payment out of the investment 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. If there are a large number of regular payments, to keep calculations simpler, I will accept if On-Line totals all those payments and deducts that figure at the end instead of deducting periodically.

why is this remedy suitable?

I have decided on this method of compensation because:

- Mr D wanted capital growth with a small risk to his capital.
- 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 his 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 a mix of diversified indices representing different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return.
- I consider that Mr D's risk profile was in between, in the sense that he was prepared to take a small level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mr D into that position. It does not mean that Mr D would have invested 50% of his money in a fixed rate bond and 50% in some kind of index tracker investment. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr D could have obtained from investments suited to his objective and risk attitude.
- Mr D has not yet used his pension plan to purchase an annuity.

my final decision

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £150,000, plus any interest and/or costs that I consider appropriate. If I consider that fair compensation exceeds £150,000, I may recommend the business to pay the balance.

determination and award:

I uphold the complaint. I consider that fair compensation should be calculated as set out above. My decision is that The On-Line Partnership Limited should pay Mr D the amount produced by that calculation – up to a maximum of £150,000 (including distress and/or inconvenience but excluding costs) plus any interest set out above.

If The On-Line Partnership Limited does not pay the recommended amount, then any investment currently illiquid should be retained by Mr D. This is until any future benefit that he may receive from the investment together with the compensation paid by The On-Line Partnership Limited (excluding any interest) equates to the full fair compensation as set out above.

The On-Line Partnership Limited may request an undertaking from Mr D that either he repays to The On-Line Partnership Limited any amount Mr D may receive from the investment thereafter or, if possible, transfers the investment at that point.

Mr D should be aware that any such amount would be paid into his pension plan so he may have to realise other assets in order to meet the undertaking.

The On-Line Partnership Limited should provide details of its calculation to Mr D in a clear, simple format.

recommendation:

If the amount produced by the calculation of fair compensation exceeds £150,000, I recommend that The On-Line Partnership Limited pays Mr D the balance plus any interest on the balance as set out above.

This recommendation is not part of my determination or award. It does not bind The On-Line Partnership Limited. It is unlikely that Mr D can accept my decision and go to court to ask for the balance. Mr D may want to consider getting independent legal advice before deciding whether to accept this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 6 July 2017.

Doug Mansell
ombudsman