

## **complaint**

Mr T complains that Premier Financial Solutions (Harrogate) Limited gave him unsuitable advice.

## **background**

The background to this complaint, and my provisional findings, are set out in the provisional decision I issued on 24 April 2017. I've attached a copy. It forms part of this decision.

I upheld the complaint. And I set out how Premier Financial Solutions (Harrogate) Limited (Premier) should redress Mr T.

Neither party had anything substantive to add. But there were some queries about how the redress should work. The adjudicator dealt with those. And I've added my comments below.

## **my findings**

I've considered again all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Neither party has commented on what I said in my provisional decision about why I intended to uphold Mr T's complaint. My views haven't changed. Premier gave Mr T unsuitable advice. Premier should redress Mr T as I've set out in my attached provisional decision.

To clarify a few points about the redress:

- I've said (under '*what should Premier do*') that Premier must compare the performance of Mr T's investment (his SIPP) with that of the benchmark (the FTSE UK Private Investors Income total return index). And that if any redress is due it should be paid into Mr T's pension plan – allowing for any charges and any available tax relief.

The charges don't relate to those Mr T might have paid if he'd transferred to a new stakeholder plan instead of the SIPP – simply any that might be made by the pension provider in connection with the redress payment. That would include, for example, any fee for valuing Mr T's Rimondi Grand holdings. I've mentioned that further below.

- Using an index to calculate compensation avoids the need to ask third parties (previous or other providers against whom no complaint has been made) what the pension fund would have been worth had it remained where it was or been transferred to a new but suitable arrangement. It's intended to be a broad reflection of the sort of return that might have been achieved. So there's no adjustment for charges.
- But we do say that the redress payment can take into account any available tax relief. So if tax relief is available on the redress payment then the net amount can be paid into the pension. Our aim is to return the consumer to the position he'd have been in if he'd been given suitable advice. That means 'topping up' the value of the investment. If the consumer gets tax relief too, he'll have been paid too much and his position will be better than it would have been. And, if redress is paid direct to Mr T instead of into his pension plan, then any tax that Mr T would have paid when he came to use his pension fund to provide an income should be taken into account too.

We've also had some queries from the SIPP provider. We've shared those, and our response, with Mr T's representative.

- The SIPP provider said it might be difficult and expensive if it had to get valuations for Mr T's Rimondi Grand holdings. And it queried who would pay for any valuation. It wanted to know if we'd be happy if it accepted a nominal £1 payment.
- And it asked if, once the compensation had been paid, it would be up to Mr T to keep the SIPP or transfer to a new provider.

The adjudicator explained that it was up to the SIPP provider to decide what value should be put on the Rimondi Grand shares – but bearing in mind that there might be tax implications if HMRC took the view that an asset had been sold at other than a commercial value. And it would be up to Mr T if he kept the SIPP or transferred to another arrangement.

**my final decision**

I uphold the complaint.

Premier Financial Solutions (Harrogate) Limited must redress Mr T as set out in my attached provisional decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 10 July 2017.

Lesley Stead  
**ombudsman**

*PROVISIONAL DECISION dated 24 April 2017*

## **complaint**

Mr T complains that Premier Financial Solutions (Harrogate) Limited gave him unsuitable advice.

## **background**

Following advice from the business (which I'll just call Premier) Mr T transferred two pension plans to a SIPP (self invested personal pension). He then invested in an unregulated investment - Rimondi Grand.

Mr T had found out about Rimondi Grand through a third party introducer. The introducer referred Mr T to Premier to arrange the transfer of Mr T's existing pension plans to a SIPP. Mr T then gave instructions to the SIPP provider to invest in Rimondi Grand.

Premier said that it advised Mr T only on the transfers to his SIPP. But we thought Premier should have considered how the SIPP monies were to be invested – Premier had known what the proposed investment was.

In our view the investment was unsuitable. Mr T wasn't wealthy. He wasn't an experienced investor. His attitude to risk was "*medium*". In the circumstances we thought the Rimondi Grand investment was too risky. Premier should have advised Mr T either to keep his existing personal pensions or to transfer to a stakeholder pension.

Premier disagreed. It said again it had only advised on the transfers to the SIPP. That was in 2011 and Premier didn't think it had done anything wrong if it had arranged for a client to have a SIPP in order to self-invest. Premier said that, in effect, the rules changed in 2013. And it would be unfair to apply that with hindsight.

Premier helped Mr T to invest as he did. But he'd already decided to invest. Premier pointed out that Mr T had agreed to buy all the initial Rimondi Grand investments on 21 December 2010, the same day as he completed the fact find which was only received by Premier later. And by the time Premier's suitability letter was sent (on 26 January 2011) the 14 day cooling off period had already expired.

Premier also said – if it hadn't arranged the SIPP – Mr T would probably have done the same thing anyway, through another adviser. He'd already agreed to buy the investment and he was relying on the SIPP being set up so he could complete the purchase.

And the suitability report made it clear that the SIPP was for self-investment, on an execution-only basis.

Mr T made a second purchase of units in the same unregulated fund more than a year after the SIPP had been arranged. This indicates he was genuinely self-investing, without Premier's advice. Premier was unaware of this investment and shouldn't be held responsible for it.

There also appears to be a guaranteed buy back option, which may reduce the risk of the investment.

Premier also referred to a complaint against a SIPP provider, dealt with by the Pensions Ombudsman, which hadn't been upheld.

We asked Mr T's representative for some more information. In particular I wanted to know if Mr T had paid any deposit to secure his investment in Rimondi Grand. I also queried the fee (£750) that he'd paid to the third party introducer. I asked if Mr T had received any 'cashback' or other incentive to invest. And why he'd decided, in March 2012, to invest a further £2,210.20, again via his SIPP.

Mr T's representative told us:

- Mr T didn't pay any deposit.
- The fee of £750 wouldn't have been paid if the investment hadn't gone ahead.
- Mr T decided to invest more as Rimondi Grand was offering small fraction investments. He qualified for 8% in the first two years. At the time he wasn't aware that the advice to invest was wrong – he thought he was doing the right thing.

## **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.

Having done so, I agree with the adjudicator that Mr T's complaint should be upheld. My reasons are the same as the adjudicator's.

I don't think, taking into account Mr T's circumstances and, in particular, his capacity for risk, the Rimondi Grand investment was suitable for him. He was only prepared to take a medium degree of risk. Investing the bulk of his relatively modest pension fund in an unregulated, niche and speculative overseas property investment wasn't suitable for him.

The transfer to the SIPP was to facilitate the Rimondi Grand investment – and Premier knew that. The pension transfer fact find says the fee structure set out (3% of the amount invested) is '*in regards to SIPP establishment/pension transfer in relation to Rimondi Grand Hotel & Spa Resort Crete*'. So it's clear Premier knew the transfer to the SIPP was so that Mr T could invest his pension fund in Rimondi Grand.

As the adjudicator's explained, suitable advice generally requires consideration of the suitability of the overall proposition – that is the SIPP wrapper and the expected underlying investment. So Premier had to take into account the overall investment strategy – the proposed investment in Rimondi Grand.

Premier's suggested that didn't represent the regulatory position at the time. And we're judging what happened with the benefit of hindsight. I don't agree. The regulator's alert wasn't issued until later (January 2013). But it didn't follow any change in the regulations. Rather it served as a reminder as to what the position was and had been.

I've taken into account that by the time Premier became involved Mr T already knew about the opportunity to invest in Rimondi Grand. And that the suggestion had come from a third party, not Premier. So I've thought about what Mr T would have done if Premier had advised him against transferring and investing in Rimondi Grand.

It's possible, as Premier has suggested, that Mr T would have gone ahead anyway even if Premier had advised him against. He might have found another adviser who was prepared to facilitate the transfer.

Mr T might have thought Rimondi Grand was a good investment. And that it offered a chance to significantly improve his pension fund. But he was paying for advice (3% of the amount invested) from Premier, a regulated financial adviser. I don't think it follows that he'd have disregarded advice that he shouldn't go ahead.

Premier should have thought about the investment itself and its suitability for Mr T. As I've said I don't think it was suitable for him. If Premier had told him that and explained why I think Mr T would have thought about things again and decided that he didn't want to take the level of risk that was involved.

Mr T's told us that he didn't pay any deposit when he signed the application form on 21 December 2010. So he wasn't in a position where he'd lose money if he changed his mind. And the third party introducer's fee was only payable if the investment went ahead. So Mr T hadn't already paid a fee which he'd lose. Nor did he get any cash incentive to invest.

With proper advice I think Mr T would have reflected and realised that the investment was too risky for him and so he shouldn't proceed.

I'm aware of the Pensions Ombudsman's decision. But that complaint was against the SIPP provider. Mr T's complaint is against Premier, as his financial advisers. So I don't think that decision is relevant.

As I've mentioned above, Mr T invested a further, smaller amount in Rimondi Grand in March 2012, over a year after his initial investment was made. I can see Premier's argument that it isn't responsible for any losses Mr T's suffered or will suffer on that investment because it didn't advise him in connection with it.

But it seems to me that Mr T's second investment was only made because he'd earlier invested in Rimondi Grand. He's told us that existing investors were offered the opportunity to invest more which Mr

T did. So I think Premier is responsible for that second investment – if it had advised Mr T against transferring and making the initial investment he wouldn't have made the further investment.

I've set out below how Premier should work out and pay compensation to Mr T. It broadly follows what the adjudicator suggested.

The position is complicated because Mr T can't sell his Rimondi Grand investments. I understand he did want to close his SIPP and transfer the proceeds to a different pension arrangement. But he can't do that because the Rimondi Grand holdings are illiquid – they can't be sold at the moment.

I've set out below how that might be overcome – by Premier buying the investments. That will mean Mr T's SIPP can be wound up and so Mr T won't continue to incur SIPP fees. But I've also said what should happen if Premier can't do that and so Mr T is forced to keep his SIPP and continue to incur charges.

### **fair compensation**

My aim is to put Mr T as close as I can to the position he'd probably be in now if he hadn't been given unsuitable advice.

I don't think Mr T needed to transfer to a SIPP. He only did that so he could invest in Rimondi Grand. If he'd been told that investment wasn't suitable for him there'd have been no need for a SIPP.

In that case he might have stayed with his existing providers or taken out a new plan with a new provider.

We could ask Mr T's existing providers to work out what his funds would be worth if he'd have stayed with them.

But, on the other hand, Mr T may have decided to consolidate his existing arrangements, possibly into a new stakeholder plan. So I think redress should be worked out on that basis – which avoids the need to ask Mr T's former providers to carry out notional calculations when they aren't a party to the complaint.

I think Mr T would have invested differently. I can't say *precisely* what he would have done differently. But I'm satisfied what I've set out below is fair and reasonable given Mr T's circumstances and objectives when he invested.

### **what should Premier do?**

To compensate Mr T fairly, Premier must:

- Compare the performance of Mr T'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.

If redress is due, then this should be paid to Mr T's pension plan. The payment should allow for the effect of charges and any available tax relief. It shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If the payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr T as a lump sum after making a deduction of 15%.

The payment would otherwise have been used to provide pension benefits, 25% of which would be tax free and the rest would have been taxed according to Mr T's likely tax paying status in retirement – presumed to be 20%. And so the 15% deduction adequately reflects this.

Details of the calculations should be provided to Mr T in a clear and simple format.

- Pay to Mr T £200 for the upset and inconvenience he's experienced as a result of the unsuitable advice.
- Pay any interest as set out below. Income tax may be payable on any interest awarded.

investment name	status	benchmark	from ("start date")	to ("end date")	additional interest
SIPP	still exists	FTSE UK Private Investors Income total return index	date of investment	date of calculation	8% simple per year from date of my final 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.

Premier should buy Mr T's Rimondi Grand holdings by paying a commercial value acceptable to the SIPP provider – so the actual value will include that payment.

If Premier is unable to buy the holdings then their *actual value* should be assumed to be nil for the purpose of calculating compensation. Premier may then ask Mr T to give an undertaking to account to it for the net amount of any payment the SIPP may receive from the Rimondi Grand holdings in the future. That undertaking should allow for the effect of any tax and charges on the amount Mr T may receive from the investment and any eventual sums he would be able to access from the SIPP. Premier must meet any costs in drawing up the undertaking.

### **fair value**

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

I assume any distributions from the Rimondi Grand investment have been paid into the SIPP. And I can't see Mr T has taken anything out by way of tax free cash or other income. But if he has, or if any distributions have been paid to him direct, this should be accounted for in calculating the fair value.

### **future SIPP fees**

The SIPP only exists because of the Rimondi Grand investment. For the SIPP to be closed and further SIPP fees avoided the Rimondi Grand holdings need to be sold. If Premier can't buy them Mr T will be faced with ongoing SIPP fees. I think it's fair to assume five years' of future SIPP fees. So, if Premier can't buy the investment, it should also pay Mr T (as well as calculating redress based on a nil value for the Rimondi Grand holdings) an amount equal to five years of SIPP fees based on the current tariff.

### **why is this remedy suitable?**

I've decided on this method of compensation because:

- Mr T wanted capital growth and was willing to accept some investment risk.
- The FTSE UK Private Investors Income total return index (prior to 1 March 2017 the FTSE WMA Stock Market total return index) is made up 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.
- Although it's called an income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mr T's circumstances and risk attitude.
- Mr T hasn't yet used his pension plan to purchase an annuity.

### **my provisional decision**

I uphold the complaint. Premier Financial Solutions (Harrogate) Ltd should calculate and pay redress as I've set out above.

Lesley Stead  
**ombudsman**