complaint

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

background

I issued my provisional decision on this complaint on 17 July 2020. The background and circumstances of the case and the reasons why 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. Neither party provided any more evidence or made any further comments.

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 see no reason to depart from the findings set out in my provisional decision that the complaint should be upheld.

my final decision

Accordingly, for the reasons set out in my provisional decision which is attached, my final decision is that I uphold Mr S' complaint.

I order Alexander David Securities Limited to calculate and pay compensation to Mr S on the following basis.

fair compensation

In assessing what would be fair compensation, my aim is to put Mr S as close as possible to the position he would probably now be in if he had been given suitable advice. I think Mr S would have invested differently. It's not possible to say *precisely* what he would have done, but I am satisfied that what I have set out below is fair and reasonable given Mr S' circumstances and objectives when he invested.

what should Alexander David do?

To compensate Mr S fairly Alexander David should:

- Compare the performance of Mr S' investment with that of the benchmark shown below. 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 set out below.

If there is a loss, Alexander David Securities Ltd should pay into Mr 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 Mr 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 compensation should be reduced to *notionally* allow for any income tax that would otherwise have been paid. The *notional* allowance should be calculated using Mr S' actual or expected marginal rate of tax at his selected retirement age.

I think M S is likely to be a basic rate taxpayer at the selected retirement age, so the reduction should equal the current basic rate of tax. However, if Mr S would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation.

investment name	status	Benchmark	from ("start date")	to ("end date")	additional interest
SIPP	still exists	for half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	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 Mr S' acceptance of this decision

In addition, Alexander David should:

- Pay Mr S £250 for the inconvenience the disruption to his retirement planning has caused.

- Provide details of the calculation to Mr S 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 Mr S how much it has taken off. It should also give Mr S a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

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 investment its value should be assumed to be nil for the purpose of calculation.

Alexander David Securities Ltd may wish to require that Mr S provides an undertaking to pay it any amount he may receive from the investment 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 what the sum transferred from the pension provider, plus any charges incurred within the plan on transfer, would have been worth at the end date had they grown in line with the benchmark.

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, Alexander David Securities Ltd 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 SIPP 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 Mr S hasn't got the opportunity to close the SIPP or transfer to another pension if the illiquid debenture remains in it. So *if* Alexander David Securities Ltd can't buy the investment and it remains illiquid, it should pay Mr S 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?

The investigator recommended that the firm should use the FTSE UK Private Investors Income Total Return Index as a basis to calculate compensation. This was because Mr S' existing pensions were invested in mainstream equity funds and he thought Mr S was willing to accept a moderate level of risk.

However Mr S has said he was risk averse; his pensions were his only savings and he was unemployed at the time of the transfer. So I think his circumstances were consistent with an aversion to risk, and he didn't have the capacity to accept the loss of his pensions. In the circumstances, I don't think Mr S would have transferred with suitable advice.

But I think he would have switched investments with his existing provider given the existing funds presented significant risks. Given I don't know exactly how he would have invested, I think the index I have outlined above is an appropriate benchmark as I think it's a reasonable proxy for a lower level of risk that Mr S was willing and able to take.

- 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 their 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 made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's a fair measure for someone who was prepared to take some risk to get a higher return.

- I consider that Mr 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 S into that position. It does not mean that Mr S 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 S could have obtained from investments suited to his objective and risk attitude.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 21 September 2020.

David Ashley
ombudsman

Copy of Provisional decision

complaint

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

background

Mr S, through his representative, complained to Alexander David in April 2018. I understand Alexander David didn't acknowledge or respond to the complaint. The representative subsequently referred the complaint to us.

Our investigator asked Alexander David for its files and to provide any other evidence it wanted us to take into account. Alexander David provided very little documentation from the time of the transaction. It said St Pauls' role was to review the yields on pension products and if the client expressed an interest they would be passed on to another firm that had "pension advisory permissions." It said Mr S invested through this other firm, and that he did so on an execution only basis.

The background to the complaint was set out by the investigator in his assessment. He explained Mr S had said, through his representative, that he was cold called by St Pauls Marketing and he was offered a pension review – which he accepted. He said that representatives from St Pauls then visited him at his home.

Mr S had two pension plans; both held with the same pension provider. St Pauls Marketing had received information about the plans directly from the pension provider in a letter dated 13 March 2016, after the pension provider had received a signed authority from Mr S. One plan was a stakeholder pension invested in a mixed investment (40-85 shares). Its value was around £20,000 in May 2016. And Mr S had a personal pension invested in UK and Global Equity funds valued at around £2,000 in March 2016.

Mr S had said that at the meeting the returns from his current plans were compared with the potential returns from the prospective investment (debentures issued by a single company). He said he was told the debentures were likely to perform at around 12% per year, though there were guarantees of at least 6% per year. He said he was told his current plans were performing worse than this.

The investigator said Mr S received a letter from another firm (who he understood were involved in the administration process) in April 2016. The letter said:

"We have information from St Pauls Marketing in relation to an investment you wish to make. We understand you wish to transfer an existing pension to fund this investment and that in order to do this you have chosen to apply for the [SIPP Provider] *SIPP"."* The same letter contained an application form for the SIPP.

Both plans were transferred to the SIPP and an account with a discretionary fund manager was subsequently opened. Just over £21,000 was used to buy debentures in the single company.

The investigator said that Mr S' original pension provider had confirmed that it had sent St Pauls Marketing information about Mr S' existing pensions. And the new SIPP provider had confirmed that St Pauls Marketing were the introducing firm. He noted this was consistent with the letter from the other firm involved in the administration process which confirmed the introduction was made by St Pauls. He thought the documentary evidence that was available reinforced Mr S' testimony.

The investigator said he thought it was clear St Pauls Marketing was involved in the transfer and investment. And given Mr S had said St Pauls Marketing had compared the possible returns from his existing pension with those proposed, he thought it likely this would have shown that one was better than the other. The investigator said he found it difficult to imagine a discussion about the two investments taking place without St Pauls recommending that Mr S take out the better performing one.

The comparison of the two prospective investments was specific to Mr S' circumstances – it involved looking at the performance of his plans in relation to his objectives. And he noted this was what Mr S had said had happened.

Taking all this into account, the investigator thought that St Pauls had made a personal recommendation to Mr S. So he went onto consider the suitability of the recommendation.

The investigator said that Mr S was a relatively inexperienced investor in 2016. The two pensions were his entire pension provision. He held no other investments and had only had cash savings accounts in the past. And he had no fixed income. His existing pensions were invested in diversified funds in traditional assets. And the stakeholder plan had returned around 25% in the 2014 to 2016 period.

In comparison, the debentures were issued by a single company that was involved in peer to peer lending. The investigator noted that according to Companies House website the firm had first incorporated in December 2014. So when St Pauls Marketing approached Mr S it had only been in existence for about eighteen months. It was a new company in a fledgling industry. Yet Mr S' entire retirement provision was invested in it. This resulted in magnifying the risk. The investigator thought Mr S would have been willing to take a moderate amount of investment risk given how his existing scheme had been invested. However the debentures were speculative and the investigator thought they were unsuitable for Mr S.

The investigator sent his assessment of the complaint to Alexander David. However it didn't provide a response. The investigator subsequently wrote to both parties on 2 December 2019 explaining that the complaint would be passed to an ombudsman for review and to make a final decision. No further evidence or arguments were 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 Mr S' original complaint. And it only provided very limited information to the investigator to enable him to carry out his investigation. It didn't provide any further evidence or arguments in response to the investigator's assessment. So there's only very limited evidence available to establish what happened at the time of the transfer and investment.

I've carefully considered the evidence that is available including Mr S' recollections of events. Alexander David/St Pauls hasn't disputed what Mr S said in his 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 Mr S has said about St Pauls' role is consistent with what other complainants have described. So I think what he has said is plausible. And taking everything into account, I have found it credible.

As noted by the investigator, Mr S had said that at the meeting the returns from his current plans were compared with the potential returns from the debentures and he was told the debentures were likely to perform significantly better.

Mr S has said to us:

"I have no experience in investing in "alternative investments" as you call them…..
I am risk adverse as this is the only savings i have and I have been out of work since I was made redundant at the age of 40 ….The pensions consultant from St Paul's came to analyse my pension performance ("a review") and demonstrated that my pension pot with [pension provider] *had actually gone down in recent years prior to his visit (At the time I was suffering greatly from depression and M.E.). I was concerned that I needed to do something to stop the figure going down and was shown that previous performance from the SIPP had proved good."*

Mr S completed a complaint form for us a copy of which was sent to Alexander David. In it Mr S' representative said that during the financial review meeting Mr S had with St Pauls Marketing, Mr S was advised on using his pension to invest in the debentures and St Pauls Marketing aided in the movement of the existing pension.

The documentation shows St Pauls Marketing were involved from the outset. Mr S subsequently transferred his pensions to the SIPP and invested in the debenture. In my experience it's unusual for someone of Mr S' background and experience to want to transfer an existing pension in order to invest in this type of investment without prompting.

I'm satisfied, that St Pauls initiated the investment in the debenture. It was aware of where the investment was going to be made through the DFM and facilitated it. Mr S has said St Pauls advised him to use his pension to invest in the debentures, the investigator said he thought it likely St Pauls had recommended the investment and it wasn't suitable for him. And the firm hasn't disputed this. In all the circumstances and on the balance of the evidence available, I think it's more likely than not that advice was given.

St Pauls Marketing was the promoter for the debenture, but I'm satisfied, on the limited evidence available, that it went beyond just promoting it and was involved in arranging the investment (as well as recommending it). Mr S has described its involvement and the documentation that is available is consistent with what he has said.

These debentures were a non-readily realisable security. The promotional material I have seen referred to debentures as illiquid; said that there might be no market for them even after listing, and said that investors might need to hold them to redemption. COBS 10 required St Pauls Marketing to assess Mr S' *"knowledge and experience in the*
investment field relevant to the specific type of product or service offered or demanded so as to enable the firm to assess whether the service or product envisaged is appropriate."

Mr S had no significant investment knowledge and no experience of making investments of this nature. The debentures were high risk and speculative and clearly not appropriate for Mr S given his background, knowledge and circumstances

The FCA is responsible for consumer protection. Its Principles for Business are a general statement of the fundamental obligations on the firms it authorises. These include Principle 6, that it must pay due regard to the interests of its customers and treat them fairly, and Principle 9, that it must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment.

In my view switching a pension can be a fairly complex transaction with a number of different factors to weigh up and consider. Mr S was an ordinary retail investor. He doesn't appear to have had any particular experience or knowledge of this type of transaction or the complex and higher risk investments he was invested into. I think Mr S was entitled to rely on the firm providing advice that was suitable to his circumstances. It was acting in its professional capacity and was obliged to take reasonable care to ensure the suitability of its advice and to act in Mr S interests.

Mr S has said he was risk averse and the pensions represented his only savings. He'd got very limited capacity for loss. I think it was clear that the debentures weren't suitable or appropriate for Mr S and this should have been clear to St Pauls. So I don't think St Pauls acted in Mr S' interests.

Taking everything into account, I'm satisfied that if St Pauls hadn't advised Mr S to transfer and invest in the debentures or if it had told him it wasn't appropriate or suitable for him, he wouldn't have transferred and invested in them. Accordingly, I'm satisfied that St Pauls' failures caused Mr S to transfer and invest in a product that he would otherwise not have invested into. And I'm satisfied its failures caused the losses that Mr S has claimed.

my provisional decision

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

fair compensation

In assessing what would be fair compensation, my aim is to put Mr S as close as possible to the position he would probably now be in if he had been given suitable advice. I think Mr S would have invested differently. It's not possible to say *precisely* what he would have done, but I am satisfied that what I have set out below is fair and reasonable given Mr S' circumstances and objectives when he invested.

what should Alexander David do?

To compensate Mr S fairly Alexander David should:

- Compare the performance of Mr S' investment with that of the benchmark shown below. 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 set out below.

If there is a loss, Alexander David Securities Ltd should pay into Mr 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 Mr 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 compensation should be reduced to *notionally* allow for any income tax that would otherwise have been paid. The *notional* allowance should be calculated using Mr S' actual or expected marginal rate of tax at his selected retirement age.

I think M S is likely to be a basic rate taxpayer at the selected retirement age, so the reduction should equal the current basic rate of tax. However, if Mr S 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 should:

- Pay Mr S £250 for the inconvenience the disruption to his retirement planning has caused.

- Provide details of the calculation to Mr S 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 Mr S how much it has taken off. It should also give Mr S a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

investment name	status	Benchmark	from ("start date")	to ("end date")	additional interest
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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.

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Fair value

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To arrive at the *fair value* when using the fixed rate bonds as the benchmark, Alexander David Securities Ltd 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 SIPP 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 Mr S hasn't got the opportunity to close the SIPP or transfer to another pension if the illiquid debenture remains in it. So *if* Alexander David Securities Ltd can't buy the investment and it remains illiquid, it should pay Mr S 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?

The investigator recommended that the firm should use the FTSE UK Private Investors Income Total Return Index as a basis to calculate compensation. This was because Mr S' existing pensions were invested in mainstream equity funds and he thought Mr S was willing to accept a moderate level of risk.

However Mr S has said he was risk averse; his pensions were his only savings and he was unemployed at the time of the transfer. So I think his circumstances were consistent with an aversion to risk, and he didn't have the capacity to accept the loss of his pensions. In the circumstances, I don't think Mr S would have transferred with suitable advice.

But I think he would have switched investments with his existing provider given the existing funds presented significant risks. Given I don't know exactly how he would have invested, I think the index I have outlined above is an appropriate benchmark as I think it's a reasonable proxy for a lower level of risk that Mr S was willing and able to take.

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  Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr S could have obtained from investments suited to his objective and risk attitude.

David Ashley
ombudsman