

complaint

Mrs H's complaint against JELF Financial Planning Ltd (Jelf) concerns the advice and administration provided to her about her Self-Invested Personal Pension (SIPP).

background

The complaint raised by Mrs H concerns the following issues:

- £102,000 was taken from her offshore bond in February 2010 to pay part of her tax free cash sum but this was not paid until March 2010. Therefore she asked whether this sum was taken from the bond too early.
- Why were her income drawdown payments stopped in May 2011 and not started again for five months? And again in May 2012 they were not paid for two months.
- Mrs H wanted confirmation that Jelf's dealings with her discretionary investment managers, who they introduced to her, were conducted correctly.
- She questioned the use of one of her investments being used for drawdown income.
- She said that Jelf had received ongoing trail fees for six months after she had dispensed with their services in December 2012.
- She questioned whether any further pensions had been opened with another provider as the subject access request she had made of Jelf had shown detailed that money was held with another provider.
- She believed attempted fraud may have occurred on her offshore bond and when she had taken out two mortgages with the adviser from Jelf under a separate company name.

The adjudicator investigated the issues and concluded that:

- Mrs H signed and sent a request dated Tuesday 19 January 2010 to her offshore bond provider. She stated in the request that the fixed rate deposit within the bond that was maturing on Friday 19 February 2010 was not to be rolled over to another fixed rate deposit as she wanted to withdraw £102,000. This sum was forwarded from the provider to her SIPP bank account on Tuesday 23 February 2010 and later paid as part of her tax free cash sum on Thursday 4 March 2010. He therefore did not consider that this transaction had been handled unreasonably.
- Jelf had advised Mrs H to take her tax free cash sum and a regular income using a drawdown arrangement. Around the same time they introduced her to discretionary investment managers. The adjudicator said there was insufficient evidence to demonstrate that Jelf had instructed the fund managers to forward an amount from her investments to her SIPP bank account on a monthly basis to make sure her income could be paid. He therefore concluded Jelf should compensate her for the time the drawdown income was unpaid.
- Mrs H questioned the use of one of her investments being used for drawdown. The investment used to provide drawdown income actually provided the extra funds that when added to the £102,000 made up her tax free cash sum of £132,000.61. The adjudicator did not think it unreasonable for this investment to be used to provide the extra funds for Mrs H's tax free cash sum to be paid.
- There was no call recording confirming Mrs H had dispensed with the adviser's services in December 2012. However, at this time she was going through a tax investigation that she held the advisers responsible for. She was not happy with the overall adviser's services. Also the discretionary managers recommended by the advisers she was not happy with to the extent she change their status from

discretionary management to advisory so she could choose her own investments. In all probability with the change in status of the discretionary management in December 2012 it is reasonable to think this is when she dispensed with the services of the advisers. In all probability Mrs H had dispensed with Jelf's services at that time and they should compensate Mrs H by reimbursing the fees taken from that time with interest.

- Mrs H referred to monies held with another provider. The adjudicator said the other provider was a broker who helped buy shares on behalf of her SIPP and that the role they played in the process was legal and the transactions they made did not create a new pension plan.
- The adjudicator could see no evidence to support Mrs H's concern that fraud may have been committed. He did suggest that if she did feel that there had been criminal activity that she might wish to take this up with the police.

The adjudicator's also noted that Mrs H had asked for clarification about the following points:

- Whether the drawdown plan was set up before April 2010 and was the tax free cash sum correctly dealt with under HMRC rules.
- To explain where her SASS monies were between April 2006 and when they were transferred into the SIPP in November 2006.
- Confirmation that everything was in order with HMRC.

The adjudicator confirmed that he understood that the tax free cash sum was paid on 4 March 2010 and the first drawdown payment was made from the SIPP on 25 March 2010. Therefore the drawdown did happen before April 2010.

The adjudicator also said that the monies had remained in the Mrs H's SSAS until it was confirmed in a letter dated 13 October 2013 to Mrs H from her SIPP administrators that the funds had then been transferred.

The adjudicator had partially upheld Mrs H's complaint and made recommendations on how compensation was calculated. Jelf agreed with the adjudicator's proposal and he wrote to Mrs H accordingly.

Mrs H disagreed with his opinion stating she could not accept any settlement until the issues about the loan note investment within her SIPP were resolved with HMRC. The adjudicator understood that the loan note interest was recorded as an employer contribution which was obviously incorrect. However, this error was not made by Jelf but the administrators of her SIPP and a complaint had been set up against them. Also the adjudicator stated that how the interest was recorded had no bearing on the errors made by Jelf or how redress should be calculated.

Mrs H responded stating that addresses recorded by Jelf were wrongly recorded and until all this had been sorted out she could not accept the settlement. The adjudicator said that again this did not affect how he recommended how redress should be calculated.

As no agreement could be reached the complaint was passed to me for a decision.

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 done so, I have come to the same conclusion as the adjudicator, and for broadly the same reasons.

I agree with the adjudicator that Jelf should have instructed the discretionary managers to forward a cash amount from the investments on a regular basis to Mrs H's SIPP bank account so she would be able to receive the monthly drawdown income they advised her to take. There is no evidence to indicate this was done which I believe led to the SIPP bank account having insufficient funds at times to pay Mrs H her monthly income.

Because there was no call recording, Jelf questioned the actual date Mrs H dispensed with their services although they eventually agreed with the adjudicator's findings. However, for the reasons explained by the adjudicator, I believe that on balance it is likely that Mrs H did dispense with their services around 5 December 2010. Given this I consider that they should have received no further commission payments after that.

I am satisfied that Mrs H gave the instruction to not reinvest the fixed rate deposit within her offshore bond in February 2010 so she could transfer £102,000 to her SIPP bank account to be used as part of her tax free cash sum. I am also satisfied that it was not unreasonable to encash the investment to provide the balance needed to pay the tax free cash. There is no evidence to show these funds would have been better coming from a different investment.

my final decision

My aim is to put Mrs H in the position she would be in now, but for Jelf Financial Planning Ltd's error. I consider it reasonable to assume that, if Jelf had acted on her instructions to cease as her advisers they would not have received commission payments from December 2012.

Therefore I direct Jelf to pay Mrs H the commission payments they received after December 2012. They should also pay 8% simple interest on those payments from the date of the payments to the date of settlement. Income tax may be payable on the interest payments.

Jelf should also pay interest as a result of the delay in the income drawdown payments that occurred in not organising the drawdown income payments correctly with third parties. In view of this I also direct Jelf to allow for interest at 8% pa simple to reflect the delayed payment.

To calculate the business should pay Mrs H the amount C where:

- A. = The actual payments made with interest at 8% pa simple interest added from the date of payments to the date of settlement.
- B. = The payments on the basis that they were made without delay with 8% pa simple interest added from the date of payments to the date of settlement.
- C. = B – A i.e. the interest payment due as a result of the delay this payment may be liable for income tax

I also direct Jelf pay Mrs H £150 for the worry caused as a result of her believing that something untoward happened when she was not paid her income.

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs H to accept or reject my decision before 16 November 2015.

Adrian Hudson
ombudsman