

complaint

Mr E complains about the advice he got from Intrinsic Wealth Limited. He ended up paying too much into his Self Invested Personal Pension Plan (SIPP) based on this advice.

background

I issued my provisional decision on Mr E's complaint on 6 April 2016, copy attached. The background to this complaint is as set out in that provisional decision. I said I was minded to uphold Mr E's complaint. But, that I proposed to make a different order for redress than recommended by our adjudicator, subject to any further representations I might get from the parties.

Both Mr E and Intrinsic Wealth said they had no further comments to make. Mr E added that he thought my provisional decision was fair.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. As no additional representations have been made I see no reason to depart from the conclusions I reached in my provisional decision.

my decision

I uphold Mr E's complaint against Intrinsic Wealth Limited. I order it to:

- refund Mr E's adviser fee of £1,800;
- reimburse the charge he had to pay his accountant of £420 including VAT; and
- pay him £2,000 compensation.

Intrinsic Wealth Limited must also pay interest on this amount at the simple rate of 8% per year from the date Mr E made his claim to the date it makes the payment.

Income tax may be payable on any interest awarded.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr E to accept or reject my decision before 20 June 2016.

Kim Parsons
ombudsman

copy of provisional decision

complaint

Mr E complains about the advice he got from Intrinsic Wealth Limited. He ended up paying too much into his Self Invested Personal Pension Plan (SIPP) based on this advice.

background

In October 2014 Mr E took advice from his adviser at Intrinsic Wealth. He had recently sold a property and wanted to invest as much as possible from the proceeds of that sale into his SIPP. He had around £82,000 to invest. He wanted to use his full tax allowance for the current tax year and the previous three tax years.

Mr E invested around £74,000 in his SIPP. But, the advice he got from Intrinsic Wealth about how much he could pay in was incorrect. His adviser had failed to take into account the contributions of £9,750 he'd paid in the tax year 2011/12. Also, she hadn't told him he could only get tax relief up to his annual income in the year of contribution (tax year 2014/15), which he'd exceeded.

Intrinsic Wealth admitted its error and apologised to Mr E. It agreed to refund its advice fee of £1800 and to pay him £1,000 compensation as a gesture of goodwill. It said the product provider would be able to refund his overpaid contributions, if he asked.

Mr E didn't accept Intrinsic Wealth's offer of settlement because, to summarise, he didn't think it fairly reflected his financial loss and the trouble he'd been put to. He added that in May 2015 he'd sold unit trusts held in his Individual Savings Account (ISA). He did this to fund a deposit on another investment property. He said had he been given correct advice, he either wouldn't have had to sell around £13,000 of these because he would've had money leftover from the sale. Or he would've used the money from the sale to pay for the deposit on the investment property. He said he could only reinvest his money in the ISA within the tax limits that applied each year.

When later asked by our adjudicator, Mr E said, that he thought that a fair amount of compensation would be:

- a refund of the adviser fee of £1,800;
- reimbursement of his accountant's fee of £420;
- compensation for the time he'd spent dealing with Her Majesty's Revenue and Customs (HMRC), and his accountant to put this right, with no support from Intrinsic Wealth who had been at fault. He suggested £400; and
- compensation to cover loss of ISA tax status, reduction of pension value and loss of advised tax rebate from reduced lump sum. He said he was told he would get £2,600 more tax rebate than he did.

One of our adjudicator's looked into Mr E's complaint and upheld it. He concluded in summary, that:

- Intrinsic Wealth's offer to refund the fee charged for advice was reasonable in the circumstances;
- it's offer to pay him £1,000 compensation was also not inappropriate;
- but, it should also cover the costs of the accountancy charges Mr E had to pay (£420 including VAT). Because he had to submit an amended self-assessment tax return for the year ending April 2015.

Intrinsic Wealth didn't accept our adjudicator's view. It thought as the accountancy charge had been incurred after it issued its final response, and Mr E had employed a third party, he should meet this cost.

Mr E told us that he got the excess contributions back from his provider and the tax charge was refunded.

As agreement couldn't be reached, Mr E's complaint has been passed to me to consider.

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 am still minded to uphold Mr E's complaint, but to make a different order for redress to the one recommended by our adjudicator.

Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

Intrinsic Wealth accepts that it gave incorrect advice. So what's left to be decided is the appropriate amount of compensation to be paid

I think Intrinsic Wealth has fairly offered to refund the advice charge of £1,800. But, I also think it should reimburse the accountant's costs. Mr E incurred these as a direct result of being given incorrect advice by Intrinsic Wealth. The product provider asked Mr E to provide something from his accountant before it would refund the overpaid contributions. So, to get his overpaid contributions back, and mitigate the impact of getting incorrect advice from Intrinsic Wealth, he had little choice but to use his accountant's services. I think therefore it would be fair for Intrinsic Wealth to meet these costs, which appear to have been reasonably incurred in the circumstances.

Mr E said that if he'd got better advice instead of investing the amount he did in his SIPP he would've either invested the maximum amount he could up to HMRC limits, or used it to pay for the deposit on his investment property. I accept this, because the reason he took advice was to ensure that he could invest in his SIPP in a tax efficient way. Mr E says based on Intrinsic Wealth's advice he was forecast to get £2,600 more tax relief than he actually got. That may be the case, but the information he was given was incorrect. Under HMRC rules he wasn't entitled to get this amount of tax relief. This service looks to put a person back into the position they would've been in had they got appropriate advice. If Mr E had been given correct advice, he wouldn't have got this tax relief, so I don't think it would be fair to ask Intrinsic Wealth to pay him this amount.

But, I think Mr E changed his position to his detriment based on the advice he got. I say this because I don't think he would've ended up disinvesting the extra £13,000 from his ISA with better advice. He appeared to want to make full use of available tax benefits in the way he structured his investments. He also had other investment properties.

Mr E was able to get the overpaid contributions refunded. But, I think overall, he's likely to have ended up being worse off as a result. He couldn't immediately reinvest the excess contributions or disinvested £13,000 in either his pension or his ISA, and get full tax relief, because of HMRC limits.

So, I think the impact of Mr E getting incorrect advice has had consequences beyond that tax year. But, I don't know how Mr E would have structured his investments with better advice. Intrinsic Wealth has offered to pay Mr E £1,000 compensation as a gesture of goodwill. I think that £2,000 would be a fairer amount taking into account that he changed his investment position to his detriment, and for the trouble, upset and disappointment he's been caused by this.

fair compensation

I am minded to order Intrinsic Wealth to:

- refund Mr E's adviser fee of £1,800;
- reimburse the charge he had to pay his accountant of £420 including VAT; and
- pay him £2,000 compensation.

Intrinsic Wealth must also pay interest on this amount at the simple rate of 8% per year from the date Mr E made his claim to the date it makes the payment.

Income tax may be payable on any interest awarded.

my provisional decision

I am minded to uphold this complaint and order Intrinsic Wealth Limited to pay Mr E fair compensation as set out above.