Financial Ombudsman Service

complaint

Mr J 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 29 July 2020. The background and circumstances of the case and the reasons 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. Alexander David Securities Limited didn't provide any further evidence or arguments. Mr J queried why the compensation for distress and inconvenience in the provisional decision was lower than the amount that had been proposed by the investigator.

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've seen no reason to depart from the findings set out in my provisional decision to uphold the complaint.

If both parties accept an investigator's assessment then a firm is effectively agreeing to settle the complaint on that basis. However if either party doesn't accept the assessment then neither party is bound by it and it is referred to me to consider afresh.

Alexander David didn't accept, or respond, to the investigator and therefore it was passed to me to consider. I'm bound to consider what I think is fair and reasonable in all the circumstances, and I've taken into account compensation that has been awarded in decisions in similar circumstances. An ombudsman's final decision is legally binding on a firm if it is accepted by the complainant within the relevant time limit.

my final decision

My final decision is that I uphold Mr J's complaint.

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

fair compensation

In assessing what would be fair compensation, my aim is to put Mr J as close as possible to the position he would probably now be in if he had been given suitable advice. I think Mr J 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 J's circumstances and objectives when he invested.

what should Alexander David do?

To compensate Mr J fairly Alexander David should:

Compare the performance of Mr J'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 as set out below. If there is a loss, Alexander David Securities Ltd should pay into Mr J'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 J'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 J's actual or expected marginal rate of tax at his selected retirement age.

I think M J 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 J 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 J £250 for the distress and inconvenience I'm satisfied the matter has caused him.

- Provide details of the calculation to Mr J 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 J how much it has taken off. It should also give Mr J 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
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 J's acceptance of this decision

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

Alexander David Securities Ltd may wish to require that Mr J provides an undertaking to pay it any amount he may receive from the debentures 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 t 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 J hasn't got the opportunity to close the SIPP or switch 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 J 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?

Mr J has said he was a low risk investor; his pensions were his only savings and he was unemployed at the time of the transfer. So I think his circumstances were consistent with someone who only had limited capacity for risk. In the circumstances, I don't think Mr J would have transferred with suitable advice.

But given I don't know exactly how he would have invested if he had been suitably advised – even if he had remained with his original scheme, I think the index I have outlined above is an appropriate benchmark as I think it's a reasonable proxy for the lower level of risk that Mr J 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 J's risk profile was in between, in the sense that he was only prepared to take a small level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mr J into that position. It does not mean that Mr J would have invested 50% in some kind of index tracker investment. Rather I consider this is a reasonable compromise that broadly reflects the sort of return Mr J 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 J to accept or reject my decision before 14 September 2020.

David Ashley
Ombudsman

Copy of provisional decision

complaint

Mr J 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 J, through his representative, complained to Alexander David in November 2018. I understand Alexander David didn't provide any material response to the complaint. The representative subsequently referred it to us.

One of our investigator's looked into Mr J's complaint. She asked Alexander David for its files and to provide any other evidence it wanted us to take into account. Despite reminders, she received no material evidence or arguments. The investigator therefore assessed the complaint on the evidence that was available.

The background to the complaint was set out by the investigator in her assessment. She said Mr J had been 'cold called' by representatives of St Pauls Marketing and offered a pension review, which he accepted. Mr J had said they spoke to him on the phone and sent him papers to sign. Mr J had a pension plan. Its value was £26,399 on 25 November 2015. It was invested in a fund that was Mixed 40-85% shares.

Mr J had said that he was told the new investment was likely to give him a return of at least 8.4% per year, though there would be a minimum guaranteed return of at least 6% per year.

Mr J had received a letter from another firm that the investigator understood was involved in the administration process of the transfer on 8 January 2016. This 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(s) to fund this investment and that in order to do this you have chosen to apply for the* [name of SIPP]."

It further went on to say "*You must have received the Just Cash Flow Information memorandum from St Pauls Marketing. If this is not the case, please contact St Pauls on the number below*". It also said that Mr J should call St Pauls Marketing for any investment related queries. The same letter contained an application form for the SIPP.

Mr J's personal pension plan was transferred to the SIPP in January 2016. A stockbroker account was opened and £24,538 was transferred to it for investment.

The investigator thought that Mr J's testimony was consistent with the limited documentation that was available. The original pension provider had confirmed it had received a Letter of Authority from St Pauls Marketing to obtain information about the plan. The provider had written to St Pauls Marketing on 5 February 2016 to confirm the transfer. And the new SIPP provider had confirmed the introducing firm for the SIPP was St Pauls Marketing.

The investigator thought that St Pauls Marketing had made a personal recommendation to Mr J. She noted Mr J had said St Pauls Marketing had reviewed his existing pension plans with the prospective investment and said the proposed investment was performing much better. Given that the documentary evidence showed St Pauls had requested information about his personal pension from the provider a few months earlier, she thought Mr J's version of events rung true.

The investigator's view was that in reviewing the returns of the two schemes St Pauls was effectively making a recommendation, because such a comparison was always likely to show that one investment was 'better' than the other, with the inference being that Mr J should switch. She thought it was difficult to imagine a discussion about the two competing investments without St Pauls Marketing recommending that the 'better' performing one be taken.

She said according to Mr J this is what had happened. And the comparison of the two prospective investments was specific to Mr J, because it involved looking at the performance of his plans in relation to his objectives. The investigator said she wasn't convinced that Mr J would have had the knowledge or expertise to arrange the pension transfer and then proceed to invest in these investments himself. So she considered whether that recommendation was suitable for Mr J given his circumstances.

The investigator said Mr J was a relatively inexperienced investor. He'd confirmed that the personal pension was his entire pension provision. He held no other investments and had only had cash savings accounts in the past. He'd also said that he had been unemployed since 2006 and his only income was the disability living allowance. The household depended on his partner's income.

Mr J's original pension was held by a strong company within the financial services industry with an established track record. The Just Loans investment was all issued by a single company which she understood was concerned entirely with peer to peer lending. According to Companies House website, the firm behind it was first incorporated on 19 December 2014. So when St Pauls Marketing approached Mr J it had only been in existence for about eighteen months. It was a brand new company in a fledgling industry, and Mr J's entire retirement provision was invested in it. This had the effect of magnifying Mr J's risk far beyond what his circumstances suggest.

The investigator said that based on her conversation with Mr J, she thought he would have been willing to take an extremely cautious investment risk, given his circumstances and proximity to when it would have been possible for him to access these funds. She thought the Just Loans investments were speculative and unsuitable and therefore the personal recommendation wasn't suitable for Mr J.

The investigator sent her assessment of the complaint to Alexander David. However it didn't provide a response. She subsequently wrote to both parties on 5 February 2020 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 J's original complaint. It didn't provide any evidence or arguments to the investigator or respond 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 J's recollections of events. Alexander David/St Pauls hasn't disputed what Mr J said in his complaint to it, or what the investigator said in her 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 J 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.

Mr J completed a complaint form for us a copy of which was sent to Alexander David. In it he said:

I received a cold call from St Pauls Marketing, they told me the government were considering peoples pensions to ensure they were receiving a good deal. They arranged for a courier to come to my home address to collect my existing pension details. Following this all the advice I received was over the phone and I received nothing in writing. The adviser told me, by transferring my pension into this investment I would receive a retum of 8.4% in comparison to the 4% I was receiving. I was told the original investment I would be investing had fallen through and the investment now would be Just Loans. The adviser did not provide me with details of the new investment, was told there would be only one transferring in fee, I was not told there would other fees. Risk was never discussed and as a low risk, inexperienced investor, the advice to transfer my funds into such a high risk investment, I believe to be wholly unsuitable. My personal and financial situation reflect the unsuitability to invest in such funds; at the time I was not working due to ill health, I had no cash savings, no other assets and no other pension provisions for retirement. I did tell the adviser I did not want to invest into a high risk investment, he told me I would not lose anything as I was guaranteed to receive my original investment in the worse case scenario. I trusted the advisers recommendation, as he was the professional.

I'm satisfied that St Pauls initiated the investment in the debenture/shares. It was aware of where the investments that were going to be made through the DFM and facilitated it. Mr J has said St Pauls advised him to use his pension to invest in the debentures, the investigator said she 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 J has described its involvement and the documentation that is available is consistent with what he has said.

The 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 J'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 J had no significant investment knowledge and no experience of making investments of this nature. The debentures were higher risk and speculative and clearly not appropriate for Mr J 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 J 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 J 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 J interests.

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

Taking everything into account, I'm satisfied that if St Pauls hadn't advised Mr J to transfer and invest in these investments or if it had told him the debentures weren'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 J 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 J has claimed.

my provisional decision

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

fair compensation

In assessing what would be fair compensation, my aim is to put Mr J as close as possible to the position he would probably now be in if he had been given suitable advice. I think Mr J 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 J's circumstances and objectives when he invested.

what should Alexander David do?

To compensate Mr J fairly Alexander David should:

Compare the performance of Mr J'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 as set out below. If there is a loss, Alexander David Securities Ltd should pay into Mr J'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 J'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 J's actual or expected marginal rate of tax at his selected retirement age.

I think M J 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 J 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 J £250 for the distress and inconvenience I'm satisfied the matter has caused him.
- Provide details of the calculation to Mr J 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 J how much it has taken off. It should also give Mr J a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

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Actual value

This means the actual transfer value of the SIPP at the end date.

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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 J hasn't got the opportunity to close the SIPP or switch 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 J 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?

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David Ashley
ombudsman