

complaint

Mr M 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 16 September 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.

Alexander David Securities Limited didn't provide any further evidence or arguments.

Mr M's representative said it had nothing further to add.

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.

my final decision

For the reasons set out above and in my provisional decision attached, my final decision is that I uphold Mr M's complaint.

I order Alexander David Securities Limited to calculate and pay compensation to Mr M as set out in my provisional decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 2 November 2020.

David Ashley
Ombudsman

Copy of Provisional decision

complaint

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background

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

One of our adjudicators looked into Mr M's complaint. He asked Alexander David for its files and to provide any evidence it wanted us to take into account. Despite reminders, he received no response. The adjudicator therefore assessed the complaint on the evidence that had been presented.

The background to the complaint was set out by the adjudicator in his assessment. He said Mr M was advised by St Paul's Marketing Limited to switch the value of his existing personal pension of around £24,000 to a self-invested personal pension (SIPP) in 2016.

At the time of the advice Mr M was in his late 40s. The only investments he held were his personal pension that was used to fund the SIPP, an £8,000 wine investment and around £4,700 in cash. An illustration for the SIPP noted the funds were to be invested by a discretionary fund manager (DFM). There were adviser charges, annual charges for the SIPP and an annual management charge for the DFM service. The majority of the transfer value was invested in debentures for a single company.

The adjudicator concluded from the evidence he'd seen that St Paul's introduced Mr M to the SIPP provider to open the SIPP. This had been confirmed by the SIPP provider. The adjudicator said he was satisfied that St Paul's/Alexander David were responsible for the advice to transfer. And no evidence had been provided to the contrary.

The adjudicator said he didn't think it would normally be considered appropriate to recommend setting up a SIPP with such a modest transfer value. He thought the advice and set up costs for doing so would have had a detrimental effect on the value of Mr M's accumulated pension from the outset. And the deduction of those charges would require the underlying investments chosen to provide additional investment growth in order to recover the deductions within a reasonable period of time.

In addition, he said the relatively modest transfer value wasn't sufficient in order to take advantage of anything other than a relatively small number of the wider range of investment options available to a SIPP compared to a personal pension. The adjudicator said investing in unlisted securities wasn't appropriate for Mr M's circumstances as a medium or lower risk investor. These investments were speculative and high risk. And there was no guarantee the loans and/or interest would be repaid on time and there was no ready market on which they could be resold. He didn't think Mr M's limited investment experience meant he was the type of investor for whom a DFM service was appropriate.

Overall, the adjudicator thought it was Alexander David's advice to switch to the SIPP and to invest in the DFM which led to the losses Mr M had suffered. And without the advice to set up the SIPP, the DFM investments wouldn't have been made.

The adjudicator sent his assessment of the complaint to Alexander David. However it didn't provide a response. Another adjudicator subsequently wrote to both parties on 4 January 2019 setting out how he thought compensation should be calculated. And explained 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 M' original complaint or to the adjudicator's requests for information. It didn't provide any further evidence or arguments in response to the adjudicator'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 M's recollections of events. Alexander David/St Pauls hasn't disputed what Mr M 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. But I've noted that what Mr M 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 M completed a complaint form for us a copy of which was sent to Alexander David. In the complaint form Mr M said St Paul's Marketing had advised him to transfer the personal pension to the SIPP and then invest in what he now knew to be Corporate Loan Stock. He said he now realised the advice was wholly inadequate and unsuitable, He said he believed he was mis-sold the SIPP and the investment and had lost everything.

Mr M has told us that he was initially contacted by St Pauls by telephone. The documentation shows St Pauls Marketing were involved from the outset. Mr M subsequently transferred his pensions to the SIPP and invested in the debenture. In my experience it's unusual for someone of Mr M' 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 M 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 M 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 M'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 M 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 M 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 M 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 M 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 M interests.

Mr M has said he wanted a lower risk investment and the pension transferred was his only pension provision. He'd got very limited capacity for loss. I think it was clear that the debentures weren't suitable or appropriate for Mr M and this should have been clear to St Pauls. So I don't think St Pauls acted in Mr M's interests.

Taking everything into account, I'm satisfied that if St Pauls hadn't advised Mr M 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 M 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 M has claimed.

my provisional decision

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

fair compensation

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

what should Alexander David do?

To compensate Mr M fairly Alexander David should:

Compare the performance of Mr M'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 M'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 M'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 M's actual or expected marginal rate of tax at his selected retirement age.

I think M M 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 M 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 M £250 for the distress and inconvenience I'm satisfied the matter has caused him.
- Provide details of the calculation to Mr M 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 M how much it has taken off. It should also give Mr M 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 M'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 M 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 M 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 M 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 M has said he was a lower risk investor; and I think his circumstances were consistent with someone who only had limited capacity for risk. In the circumstances, I don't think Mr M 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 and is a reasonable proxy for the lower level of risk that Mr M 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 M'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 M into that position. It does not mean that Mr M 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 M could have obtained from investments suited to his objective and risk attitude.

David Ashley
ombudsman