

complaint

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

One of our adjudicators looked into Mr B'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. Mr B had said he received a letter from St Pauls Marketing Limited stating they'd located his current pension, although he didn't know how they had become involved with it. Mr B said he received phone calls and an adviser visited him and explained by moving his pension he would get a further 1-2% per year.

Mr B said he wasn't made aware of the specific investment and his understanding was that he would invest at a medium level of risk. Approximately £55,000 was transferred/invested into a SIPP in May 2016, of which approximately £50,000 was transferred to a discretionary fund manager and invested in a single company's debentures.

The adjudicator said it hadn't been disputed that St Pauls Marketing were involved in the transaction. And he said he thought St Pauls Marketing had recommended the investment to Mr B.

The adjudicator said he thought the investments were high risk, having limited liquidity, listed on a smaller unregulated market and having a limited track record. He thought investing most of a pension in such a scheme would increase the investment risk by concentrating in a single plan, as opposed to diversifying across several holdings and asset classes. He thought it would've been clear that the intended investment was unsuitable for Mr B's circumstances, particularly given that he wanted access to his pension benefits.

The adjudicator also said if St Pauls Marketing hadn't made a recommendation it was still obliged to assess the appropriateness of the investment in accordance with COBS 10.2.1 (Conduct of Business Rules). And it also had an overriding obligation to act in Mr B's best interests.

The adjudicator thought that if St Pauls Marketing had carried out an appropriateness assessment it would've identified that Mr B couldn't afford to invest his entire pension plan in such a high risk, illiquid and niche investment. He said there was no evidence to suggest that Mr B would've insisted to proceed with the transaction against suitable advice to retain his current pension. The adjudicator said the pension switch wasn't in Mr B's best interests and it shouldn't have proceeded.

The adjudicator sent his assessment of the complaint to Alexander David. However it didn't provide a response. The adjudicator wrote to both parties on 28 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 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 B's 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 B's recollections of events. Alexander David/St Pauls Marketing hasn't disputed what Mr B 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 B 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 B completed a complaint form for us a copy of which was sent to Alexander David. In the complaint form Mr B said that St Pauls Marketing contacted him and following several phone calls he had a meeting with them at his home. He said he was advised to transfer his pension for improved returns. He said he was unemployed at the time, had no savings, and was a low to medium risk investor. He said he shouldn't have been exposed to such a high-risk investment which was unsuitable for him and his objectives.

The documentation shows St Pauls Marketing were involved from the outset. Mr B subsequently transferred his pensions to the SIPP and invested in the debentures. In my experience it's unusual for someone of Mr B'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 Marketing 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 B has said St Pauls Marketing advised him to use his pension to invest in the debentures, the investigator said he thought it likely St Pauls Marketing 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 B 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 B'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 B 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 B given his background, knowledge and circumstances.

In my view switching a pension can be a fairly complex transaction with a number of different factors to weigh up and consider. Mr B 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 B 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 B interests.

Mr B has said he was a low to medium risk investor. Mr B had very limited capacity for loss. I think it was clear that the debentures weren't suitable or appropriate for Mr B and this should have been clear to St Pauls Marketing.

Taking everything into account, I'm satisfied that if St Pauls Marketing hadn't advised Mr B 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 Marketing's failures caused Mr B 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 B has claimed.

my final decision

My final decision is that I uphold Mr B's complaint

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

fair compensation

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

what should Alexander David do?

To compensate Mr B fairly Alexander David should compare the performance of Mr B'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 B'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 B'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 B's actual or expected marginal rate of tax at his selected retirement age.

I think Mr B 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 B 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	Original personal pension	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 B's acceptance of this decision

In addition, Alexander David should:

- Pay Mr B £300 for the distress and inconvenience I'm satisfied the matter has caused him.
- Provide details of the calculation to Mr B 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 B how much it has taken off. It should also give Mr B 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 debentures its value should be assumed to be nil for the purpose of calculation.

Alexander David Securities Ltd may wish to require that Mr B 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 to date had they grown in line with the benchmark.

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 B 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 B 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 B has said he was a low to medium risk investor. His existing pension was invested in assets that were suitable to his risk profile. In all the circumstances, I don't think Mr B would have transferred with suitable advice. So I think the comparison should be against his original pension arrangement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 8 January 2021.

David Ashley
Ombudsman