Financial Ombudsman Service

complaint

Mr A has complained that Hanover St Mortgage Services Ltd (formerly SR Wealth Management Ltd) gave him unsuitable advice to increase and redirect contributions to a new plan rather than pay them to his existing pension arrangement, which had a protected retirement age of 35.

Mr A also subsequently transferred the new plan that was set up to another pension arrangement. Mr A does not consider that the advice was in his best interests and has complained that as a result the earliest age he can take benefits on his new plan is at age 55.

background

In March 2006 Mr A (then aged 25) arranged a pension policy which because of his occupation had a protected retirement age of 35.

In August 2010 SR Wealth Management Ltd (referred to from now on as SR Wealth) advised Mr A to arrange a top up his pension plan using a new product provider on the basis that the original product provider was no longer taking on any new business.

In October 2012 SR Wealth advised Mr A to transfer his top up policy to a new provider on the basis that the proposed new arrangement had a cheaper charging structure.

In March 2013 when Mr A was 32 he discovered that he could not take benefits from age 35 as he had hoped as he had lost his protected retirement age of 35.

The complaint was investigated by one of our adjudicators who concluded that it should be upheld. He noted:

- Mr A's could have increased his contributions within an existing policy and restructured his portfolio in-line with his stated attitude to risk, rather than redirect his payments into a new plan and make his existing plan paid-up.
- As any new plan would have a minimum retirement age of 55 the benefit and flexibility on Mr A's protected retirement age of 35 held on his existing plan was not extended.
- There was insufficient evidence to suggest a fair comparison was made between increasing Mr A's contributions with his existing pension provider against that of setting up a new plan.
- The arrangement of the new plan caused Mr A unnecessary charges.
- Although the original product provider had stopped taking new business, they would still have allowed existing policyholders to increase contributions and restructure their portfolio.
- There was no significant difference in the asset classes of the funds available through the different product providers.
- The adjudicator did not consider it was necessary to assess the suitability of the subsequent transfer as it was his view that all the new contributions should have been paid to Mr A's original plan.

The business responded, requesting that the Financial Ombudsman Service calculate the redress due to Mr A before they would be in a position to provide a full response. Having been provided with figures the business responded and in summary they:

- Questioned the accuracy of the figures provided by the original product provider.

- Argued that the opinion was based upon performance rather than the suitability of the contract.

- The assets of S R Wealth Management Limited had been sold to Hanover St Mortgage Services Ltd but the latter company were not responsible for this complaint.

The adjudicator considered the submission from the business but he was not persuaded to change his view. He did however revise the basis of the redress that he recommended. He explained that:

- He considered that there were no persuasive reasons for Mr A to set up a new plan and he should have been recommended to continue paying into and also increase contributions to his existing plan with a retirement age of 35 rather than set up a new contract.

- He considered that Mr A should have been advised to reduce the risk profile of his fund investments. This took account of his attitude to risk that was recorded as being 4 on a scale of 1 to 10 and the fact that the adviser had said that "*We discussed your attitude to risk which I have assessed as one of being relatively cautious but not minding a small element of risk"*. The adjudicator considered that the original policy's holdings in both property and equities were too high. As it was not possible to say precisely into which funds Mr A would have invested he recommended redress be calculated with reference to appropriate indices which reflected a low to medium risk profile.

- The original provider had confirmed that if M A transferred his benefits back and they were processed on a nil commission basis then he could take benefit from age 35 without penalty.

- With regard to the change in ownership of the business he requested that details be provided to confirm who was liable for the advice provided to Mr A.

A director of S R Wealth Management Ltd responded regarding who was liable for the claim and said that as part of the sale it was agreed that he would be solely liable for the complaint and not Hanover St Mortgage Services Ltd.

The adjudicator asked for evidence that this was the case. The Companies house database showed Hanover St Mortgage Services Limited as having the same company registration number S R Wealth Management Ltd. It therefore appeared that in his opinion the liability for the claim lay with Hanover St Mortgage Services Limited. The adjudicator confirmed that he was of the view that any binding award that an ombudsman would make would be against Hanover St Mortgage Services Limited, unless evidence could be provided of a legal agreement that such liabilities had been passed to the third party.
The adjudicator asked for any such evidence to be forwarded to him. The adjudicator added that if there was an unofficial agreement then any binding award that an ombudsman would be made against Hanover St Mortgage Services Limited and any issues of redress would need to be sorted between them and SR Wealth Management.

The third party confirmed to the adjudicator in June 2014 that there was an agreement drawn up at the point of sale and he would ask the solicitors for a copy of this. However despite chasing this document the adjudicator has not received a copy.

my findings

Before I set out my findings, I have to address which business I consider is responsible for the advice given to Mr A. I note that Companies House records and the FCA register show that Hanover St Mortgage Services Limited had taken over the liabilities of S R Wealth Management Ltd.

The records show that the company number and FCA number are the same for both companies. As the third party has not provided the evidence requested to show that he was personally responsible for handling this complaint and the liabilities attached to it, I consider that Hanover St Mortgage Services Limited is responsible for handling this complaint. Therefore any award I make should be paid by Hanover St Mortgage Services Limited, and it will be up to them to approach the other party to seek reimbursement if they so wish.

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 reached the same conclusions as the adjudicator broadly for the same reasons.

Mr A was eligible to retire from his original policy at age 35 because of his profession. Any subsequent plan arranged would have a retirement age of 55. Mr A should therefore in my opinion have been advised to augment his original policy.

I disagree with the business that the new policy should have been set up to take advantage of the greater fund choice available under the new arrangement as I consider that there were sufficient funds available for Mr A to choose from under his existing plan.

my final decision

I uphold Mr A's complaint against Hanover St Mortgage Services Ltd (formerly S R Wealth Management Ltd).

fair compensation

My aim is to put Mr A in the position he would be in now had appropriate advice been given. I consider it reasonable to assume that, with suitable advice, Mr A would not have taken out any new pension policies but would have made the additional contributions to his existing arrangement.

The provider of policy 1 has confirmed that Mr A is able to transfer back the benefits currently held in Policy 3 and will be able to take retirement benefits at age 35 if it is processed on a nil commission basis. Hanover St Mortgage Services Ltd should arrange for this to be done.

compensation

To compensate Mr A fairly, the business should put him as close to the position he would probably now be in if he had not been given unsuitable advice. I believe Mr A would have invested differently. It is not possible to say *precisely* what he would have done differently. But I am satisfied that what I set out below is fair and reasonable given his circumstances and objectives when he invested.

what should the business do?

To compensate Mr A fairly, the business should compare

- the performance of Mr A's investment

with

- the position he would now be in if 50% of his investment had produced a return matching the average return from fixed rate bonds and 50% had performed in line with the FTSE WMA Stock Market Income Total Return Index ('WMA index')

If there is a loss, the business should pay this into a pension arrangement for Mr A. If no provider can be found willing to accept this redress then it should be paid to Mr A as a lump sum after making a deduction at Mr A's marginal rate of tax on 75% of the gross amount due. This is to reflect the fact that if the redress had been paid into the pension scheme 25% of the amount would have been payable tax free and the balance would have been used to provide an income that would have been taxable.

why is this remedy suitable?

I have chosen this method of compensation because:

- Mr A wanted growth with small risk to his capital. – The average rate is the rate for fixed rate bonds with 12 to 17 months maturity (as published by Bank of England). The WMA index is a mix of diversified indices representing different asset classes, mainly UK equities and government bonds.

- The average rate would be a fair measure for someone who wanted to achieve a reasonable return without risk to his capital and the WMA index for someone who was prepared to take some risk to get a higher return.

- I consider that Mr A's risk profile was in between, in the sense that he was prepared to take a small level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put him into that position.

- It does not mean that Mr A would have invested 50% of his money in a fixed rate bond and 50% in some kind of index tracker fund. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr A could have obtained from investments suited to his objective and risk attitude.

how to calculate the compensation

The compensation payable to Mr A is the difference between the *total fair value* and the *actual value* of his investment. If the *actual value* is greater than the *total fair value*, no compensation is payable.

actual value

This means the transfer value of the policies on the date of calculation.

total fair value

This is what Policy 1 would been worth had all contributions paid to the new policies been credited to Policy 1 and the whole fund received a return in line with 50% 'average rate element' and 50% 'WMA index element'. I consider it is reasonable to assume that the switch of his existing funds occurred on 6 August 2010 as this is the date SR Wealth issued their suitability letter recommending Mr A arrange a new pension under Policy 2.

average rate element

To arrive at this value the business should:

– find out the average rate for fixed rate bonds, as published by the Bank of England, for each month from the date of investment to the date of calculation

– the rate for each month is that shown as at the end of the previous month

– use the rate for each month to calculate the return for that month on 50% of the investment

– the calculation should be carried out on an annually compounded basis; that is, with the return added to the investment at each anniversary

– work out the value to the date of calculation

WMA index element

To arrive at this value the business should:

– work out what 50% of the investment would have been worth, if it had performed in line with FTSE WMA Stock Market Income (Total Return) index to the date of calculation

additional capital

Any additional sum that Mr A paid into the investment should be added to the calculation (split equally between average rate element and WMA index element) from the point in time when it was actually paid in.

further information

The information about the average rate can be found in the "Statistics" section of the Bank of England website. It is available under the section headed Interest and Exchange rates data / quoted household interest rates / fixed rate bonds / one year. The information about WMA index can be found in the website of the Wealth Management Association or the FTSE Group.

If the calculation results in a loss, Hanover St Mortgage Services Ltd (formerly SR Wealth) should pay the sum to Mr A's pension plan, less any tax relief that is available. If the original product provider will not accept redress payments, the redress due should be paid direct to Mr A as a lump sum less a deduction equivalent to Mr A's marginal rate of income tax. This deduction is intended to account for the tax relief available to Mr A should he choose to pay the sum to his pension plan.

Interest on any loss identified, from the date of calculation to the date of payment at 8% simple. Income tax may be due on this interest.

In addition, I direct Hanover St Mortgage Services Ltd (formerly SR Wealth) to pay Mr A compensation of £200 for the distress and inconvenience caused.

Adrian Hudson
ombudsman