

complaint

Mr H has complained about The O'Rourke Partnership Limited (TOPL). He says that it recommended and arranged for him to make an unsecured loan to a third party from funds he held in his SIPP.

background

Mr H was advised to set up a SIPP by TOPL in 2011. Later that year he was introduced to a third party by TOPL and he made a loan of £29,325.00.

The loan was to be over a short-term at a high rate of interest. The loan hasn't been repaid and Mr H has lost his money.

An investigator reviewed the complaint and considered the advice was unsuitable. He recommended that it should be upheld. He said that the unsecured loan was too high risk for Mr H and was for too great a proportion of his pension funds and TOPL should not have recommended the loan. He set out how TOPL should calculate redress and said that it should pay Mr H £200 for the distress this situation had caused.

The business didn't reply to the investigator's view. And so, as agreement's not been reached on the matter, it's been referred to me for review.

my findings

I've considered all of the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I've reached the same conclusion as the investigator and for broadly the same reasons.

An unsecured loan agreement was established between the SIPP trustees on Mr H's behalf and the loan recipient. This was witnessed by a representative of TOPL.

There is no letter of recommendation. But Mr H says the loan transaction was suggested and arranged by TOPL. The loan agreement was witnessed by TOPL and so clearly it was fully aware of it. I am satisfied that but for TOPL's involvement, I don't think Mr H would have made the unsecured loan.

I consider that the loan transaction, with the loan unsecured, represented a higher level of risk than Mr H was willing or could afford to take. I think TOPL had a duty to ensure that the loan transaction was suitable for Mr H. But I don't think that it was. It was too risky for Mr H particularly given that the loan represented such a significant proportion of his SIPP.

An unsecured personal loan exposes the money to many risks – not only that the interest might not be paid but that the capital itself would be lost if the borrower finds themselves unable to meet the repayments. As it's unsecured, there is also no security which can be sold to repay the capital. With a single loan, there is also no spread of risk across many different arrangements as might be the case with, say, peer to peer lending. But even with this type of spread, unsecured loans represent considerable risks. And there's no evidence that Mr H was in a position to take that kind of risk.

For these reasons, I uphold this complaint. I'm satisfied that that had it not been for TOPL's advice Mr H would not have agreed to the unsecured loan. I think he would have invested differently.

No doubt this advice and the failure of the loan will have caused Mr H worry and anxiety. I agree that TOPL should pay him £200 for this distress in addition to his financial loss.

fair compensation

In assessing what would be fair compensation, my aim is to put Mr H as close as possible to the position he would probably now be in if he had been given suitable advice and not entered into the loan transaction.

I think Mr H would have invested differently. It is 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.

what should TOPL do?

To compensate Mr H fairly TOPL should:

Compare the performance of Mr H'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.

TOPL should also pay any interest set out below.

If there is a loss, TOPL should pay into Mr H'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. TOPL shouldn't pay the compensation into the pension plan if it would conflict with any existing protection or allowance.

If TOPL is unable to pay the compensation into Mr H'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 H's actual or expected marginal rate of tax at his selected retirement age. For example, if Mr H is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal the current basic rate of tax. However, if Mr H would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation.

In addition, TOPL should pay Mr H £200 compensation for the unsuitable advice to make an unsecured loan from his SIPP. It should also provide the details of the calculation to Mr H in a clear, simple format.

Income tax may be payable on any interest paid. If TOPL considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr H how much Tax has been deducted. It should also give Mr H a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

investment	status	benchmark	start date	end sate	additional interest
unsecured loan	still exists	FTSE UK Private Investors Income Total Return Index	date of loan	date of settlement	N/A

actual value

This means the actual amount payable from the investment at the end date. In this case that value is nil. TOPL may take ownership of the debt if it wishes to.

fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

why is this remedy suitable?

I've chosen this method of compensation because:

- I think Mr H wanted capital growth and was willing to accept some investment risk.
- 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.
- Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mr H's circumstances and risk attitude.

my final decision

I uphold this complaint. The O'Rourke Partnership Limited must calculate and pay redress as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 19 February 2018.

Keith Taylor
ombudsman