complaint

Mrs M has complained about the advice she was given by St Paul's Marketing Limited (an Appointed Representative of Alexander David Securities Limited) to invest her pension in an unsuitable investment.

background

Mrs M has said that she was 'cold-called' in 2015 and offered a pension review. She was in her mid-forties and she had a personal pension. Mrs M has said that during a subsequent meeting at her home she was told that her existing pension wasn't performing well. And that she should transfer it to a Self- Invested Personal Pension (SIPP) which would perform better in the investment that they wanted to put her in.

She says she therefore followed the advice and transferred £15,435 to the SIPP. Of this, £14,625 was invested through a discretionary fund manager into the debentures of a single company.

Mrs M has said that she made it clear she was a low risk taker and wanted a low risk investment. She says she wasn't made aware that the investment was in fact high risk - which she didn't want. Mrs M says she had no other savings and this was her only pension; she had no investment experience, and trusted that the adviser was providing her with the most suitable advice.

Mrs M, through her representative complained to Alexander David in October 2018. I understand Alexander David didn't acknowledge or respond to the complaint. The representative subsequently referred the complaint to us.

One of our investigators looked into Mrs M's complaint. He asked Alexander David for its files and to provide any other evidence it wanted us to take into account. Despite reminders, he received no response.

The investigator therefore assessed the complaint on the evidence that had been presented, and in light of what he understood had happened given what he'd seen on other cases. He had investigated other complaints against the same firm that had been referred to us where the nature of the complaints were very similar and which were about the same investment.
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The investigator said that he understood St Pauls Marketing had sent Mrs M promotional material relating to debentures issued by this single company. He also said that he understood St Pauls Marketing sent, or arranged to be sent, a summary report to Mrs M detailing the historic performance of her existing plan and discussed it with her.

He noted that Mrs M had said that St Pauls Marketing had recommended the investment. He thought it was likely a discussion about the merits of making the investments would have taken place in the context that comparisons of the returns from the two investments were being made. The investigator therefore considered whether the investment was suitable.

He noted that the promotional material he had seen about the investment said *'An investment in the Company is only suitable for investors capable of evaluating the risks and merits of such investment and who have sufficient resources to bear any loss which may result from the investment.'* He said Mrs M had little investment experience.

He noted that Mrs M was in her mid-forties, it was her only pension, and she'd said she wanted a low risk investment. His view was that investing most of the pension in illiquid bonds from a single issuer was clearly unsuitable.

He also thought that even if St Pauls Marketing hadn't recommended the investment it should have assessed its appropriateness in accordance with the Conduct of Business Rules (COBS) 10, given the investment was a non-readily realisable security. The rules said:

This chapter applies to a firm which arranges or deals in relation to a non-readily realisable security, derivative or a warrant with or for a retail client and the firm is aware, or ought reasonably to be aware, that the application or order is in response to a direct offer financial promotion.

COBS 10 required St Pauls Marketing to assess Mrs 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.'*

The investigator said Mrs M had no significant investment knowledge and no experience of making investments of this nature. The investigator thought the investment wasn't appropriate. And he didn't think Mrs M would have invested but for the actions of St Pauls Marketing.

The investigator also thought that St Pauls Marketing had arranged the investment for Mrs M. He said the regulated activity 'making arrangements with a view to transactions in investments' had a very broad scope. He thought St Pauls Marketing's activities fell within that scope.

The investigator noted that one of the Regulator's strategic objectives was to protect consumers, and its rules reflected that objective. The Principles required St Pauls Marketing to conduct its business with integrity, pay due regard to its customers' interests and treat them fairly, and manage conflicts of interest fairly. He thought St Pauls Marketing's interactions with Mrs M had directly resulted in an inexperienced investor investing most of her pension in illiquid, high risk assets. In the circumstances, he didn't think St Pauls Marketing had acted in accordance with the Principles or in Mrs M's best interests.

The investigator sent his assessment of the complaint to Alexander David. However it didn't provide a response. The investigator subsequently wrote to both parties on 20 March 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 Mrs M's original complaint. Neither did it co-operate with our investigation; it didn't provide its business files or respond to the investigator's assessment of the complaint. There's only very limited evidence available to establish what happened at the time of the investment.

I've carefully considered the evidence that is available including Mrs M's recollections of events. St Pauls hasn't disputed what Mrs M said in her 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 and the evidence provided in each particular case. But I've noted that what Mrs M has said about St Pauls' role is consistent with what other complainants have described. So I think what she has said is plausible. And taking everything into account, I have found it credible.

I accept that a representative from St Paul's Marketing visited Mrs M at her home. Following that meeting she transferred her pension to the SIPP and invested in the debenture. Mrs M has said she was a low risk investor and has said the firm advised her to invest in the debenture. In my experience it's unusual for someone of Mrs M's background and experience to invest in this type of investment without prompting.

I think that was unlikely to have happened without the involvement of St Pauls. I'm satisfied that it initiated the investment in the debenture. It was aware of where the investment was going to be made through the DFM and facilitated it. Mrs M has said St Pauls advised her to invest; the investigator said he thought it likely she had been advised and the firm hasn't disputed this. In all the circumstances, I think it's more likely than not that advice was given.

The investigator also said he thought St Pauls was involved in arranging the transaction and that it was required, but failed, to assess its appropriateness in accordance COBS 10. He set out his reasons for understanding this and went onto say he didn't think the debentures were appropriate for Mrs M.

Again, St Pauls hasn't disputed this. I agree with the investigator that it's more likely than not that St Pauls arranged the investment. It was the promoter for the debenture, but I'm satisfied, on the limited evidence that it went beyond just promoting it and was involved in arranging the investment (and advising on it). The debenture was high risk and speculative and clearly wasn't appropriate for Mrs M given her background, knowledge and circumstances

I also agree with the investigator that St Pauls didn't act in Mrs M's best interests. For the reasons given above, I think it was clear that the debenture wasn't suitable or appropriate for Mrs M and this should have been clear to St Pauls. I'm satisfied that if St Pauls had acted in Mrs M's best interest, not advised her to invest in the debenture or if it had told her it wasn't appropriate for her she wouldn't have invested in it.

Accordingly, I'm satisfied that St Pauls' failures caused Mrs M to invest in a product that she would otherwise not have invested into. It follows that I'm satisfied its failures caused the losses that Mrs M has claimed.

my final decision

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

fair compensation

In assessing what would be fair compensation, my aim is to put Mrs M as close as possible to the position she would probably now be in if she had been given suitable advice. I think Mrs M would have invested differently. The investigator recommended that the full transfer value of the SIPP should be used for calculation purposes – albeit I note some of it remained in cash. I think this is reasonable given that it's not possible to know *precisely* what she would have done with the whole of the amount in her SIPP had it not been for St Pauls' actions. I'm satisfied that what I have set out below is fair and reasonable given Mrs M's circumstances and objectives when she invested.

It's unclear what the status of the debenture is. My understanding is Mrs M's SIPP has little or no realisable value. I've accounted for this in my recommendations below.

what should Alexander David Securities Ltd do?

To compensate Mrs M fairly Alexander David Securities Ltd should:

- Compare the performance of Mrs 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 set out below.

If there is a loss, Alexander David Securities Ltd should pay into Mrs 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 Mrs M's pension plan, it should pay that amount direct to her. 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 Mrs M's actual or expected marginal rate of tax at her selected retirement age.

For example if Mrs M 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 Mrs M would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation.

- Pay Mrs M £300 for the distress and inconvenience I'm satisfied the matter has caused her.
- Provide the details of the calculation to Mrs 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 Mrs M how much it has taken off. It should also give Mrs M a tax deduction certificate if she asks for one, so she 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 investment its value should be assumed to be nil for the purpose of calculation.

Alexander David Securities Ltd may wish to require that Mrs M provides an undertaking to pay it any amount she may receive from the investment in the future. That undertaking must allow for any tax and charges that would be incurred on drawing the 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 transfer, would have been worth at the end 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. Apply those rates to the investment on an annually compounded basis.

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 Mrs M hasn't got the opportunity to transfer 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 Mrs 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?

I've chosen this method of compensation because:

- Mrs M wanted capital growth with a small risk to her capital.

- 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 her 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 Mrs M's risk profile was in between, in the sense that she was prepared to take a small level of risk to attain her investment objectives. So, the 50/50 combination would reasonably put Mrs M into that position. It does not mean that Mrs M would have invested 50% of her money in a fixed rate bond and 50% in some kind of index tracker investment. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mrs M could have obtained from investments suited to her objective and risk attitude.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 3 August 2020.

David Ashley
ombudsman