complaint

Mr S has complained about the advice he was given by St Paul's Marketing Limited (an Appointed Representative of Alexander David Securities Limited) to invest his pension in an unsuitable investment.

background

Mr S has said that he was 'cold-called' in 2016 and offered a pension review. He was in his mid-forties and had two personal pensions. Mr S has said he was told that his pensions were 'frozen' but that he could transfer them to one plan and make investments with better returns.

The two plans worth around £94,000 were subsequently transferred to a Self-Invested Personal Pension (SIPP). About £93,000 was then invested through a discretionary fund manager (DFM) into debentures issued by a single company.

Mr S, through his representative, complained to Alexander David in November 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 Mr 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.

The investigator said that he understood St Pauls Marketing had sent Mr S 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 Mr S detailing the historic performance of his existing plan and discussed it with him.

The investigator noted that when Mr S applied for the SIPP and the DFM account he also signed a document drawn up by the SIPP provider indemnifying it against any liability arising from the investment. Among other things, the indemnity said that he had read the 'information prospectus' provided by the company issuing the debentures and was fully aware that the investment was high risk or speculative, and illiquid. He also acknowledged that he had chosen not to seek advice.

The investigator noted Mr S had said that St Pauls Marketing had recommended the investment.

The investigator said he understood Mr S had been given a summary report showing the details of his existing pensions. He thought it was likely a comparison of the possible returns from both schemes would have been made and he thought it was difficult to envisage a comparison being made without a discussion of the merits of making the proposed investment.

The investigator said although Mr S had signed an indemnity saying he hadn't sought

advice, he thought it unlikely this was a genuine execution only transaction given the nature of St Pauls Marketing's involvement and Mr S' lack of experience.

The investigator said 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 Mr S had little investment experience.

The investigator noted that Mr S was in his mid-forties, the two pensions represented over half his private retirement provision and he'd said he wanted a safe investment. His view was that seemed likely in the circumstances. And that investing over half his 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 Mr 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 Mr S 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 Mr S would have invested but for the actions of St Pauls Marketing.

The investigator also thought that St Pauls Marketing had arranged the investment for Mr S. 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 Mr S had directly resulted in an inexperienced investor investing most of his 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 Mr 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 3 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 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 Mr S' recollections of events. St Pauls hasn't disputed what Mr S 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 and the evidence provided in each particular case. But I've noted that what Mr S 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 S completed a complaint form for us a copy of which was sent to Alexander David. In it Mr S had said after receiving the cold call a meeting was arranged at his home. And at the meeting the adviser told him he could get a better return from the new investment compared to his existing investment. He said he was a low risk investor with no previous investment experience. And he thought the advice to transfer his funds into a high risk investment was unsuitable.

The documentation shows Mr S transferred his pensions to the SIPP and invested in the debenture. In my experience it's unusual for someone of Mr S' background and experience to transfer and invest in this type of investment without prompting.

I think the transaction 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. Mr S has said St Pauls advised him to invest; the investigator said he thought it unlikely this was an execution only transaction and he went onto consider the suitability of the transaction. 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 Mr S.

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 Mr S given his background, knowledge and circumstances

I also agree with the investigator that St Pauls didn't act in Mr S' best interests. For the reasons given above, I think it was clear that the debentures weren't suitable or appropriate for Mr S given his circumstances and this should have been clear to St Pauls. I'm satisfied that if St Pauls had acted in Mr S' interests, not advised him to invest in the debenture or if it had told him it wasn't suitable or appropriate for him he wouldn't have invested in it.

Accordingly, I'm satisfied that St Pauls' failures caused Mr S 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 S has claimed.

my final decision

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

fair compensation

In assessing what would be fair compensation, my aim is to put Mr S as close as possible to the position he would probably now be in if he had been given suitable advice. I think Mr S 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 he would have done with the pension had it not been for St Pauls' actions. I'm satisfied that what I have set out below is fair and reasonable given Mr S' circumstances and objectives when he invested.

It's unclear what the status of the debenture is. My understanding is that it's currently not possible to encash it, however that it's given a notional value. I note its current notional value is materially higher than the amount Mr S invested. It's possible the calculation might show Mr S hasn't suffered a financial loss.

what should Alexander David Securities Ltd do?

To compensate Mr S fairly Alexander David Securities Ltd should:

- Compare the performance of Mr 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 Mr 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 compensation into the pension plan if it would conflict with any existing on or allowance.

If Alexander David Securities Ltd is unable to pay the compensation into Mr 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 S' actual or expected marginal rate of tax at his selected retirement age.

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

- Pay Mr S £250 for the distress and inconvenience I'm satisfied the matter has caused him.
- Provide the details of the calculation to Mr S 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 S how much it has taken off. It should also give Mr S 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 investment	date of this 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 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 investment its value should be assumed to be nil for the purpose of calculation.

Alexander David Securities Ltd may wish to require that Mr S provides an undertaking to pay it any amount he may receive from the investment 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 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. 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 S 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 Mr S 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:

- Mr S wanted capital growth with a small risk to his 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 his 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 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 Mr S into that position. It does not mean that Mr S would have invested 50% of his 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 Mr S could have obtained from investments suited to his objective and risk attitude.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 19 August 2020.

David Ashley
ombudsman