

## **complaint**

Mr D complains about advice from Furness Financial Management ('FFM'). He says it made different arrangements for his pension funds to the ones agreed. Because of this, Mr D has suffered a financial loss.

## **background**

In August 2014, Mr D was approached by FFM about his pension arrangements. Mr D later met with it and took its advice to move his funds of around £330,000 to a Self Invested Personal Pension ('SIPP') and to then invest in three different funds.

In September 2014, FFM sent Mr D a suitability letter. But Mr D became aware thereafter of differences between the arrangements agreed with FFM and how his funds had been invested and the returns and accessibility of those funds.

Between January 2015 and May 2015, Mr D asked FFM about these differences. FFM sent various replies but the matter was not settled.

In October 2015 Mr D complained to FFM. It did not respond. He continued to try to contact FFM. Unable to get a response, he referred his complaint to this service.

It was established FFM had ceased to trade. However, the FFM adviser involved had set up another firm. He initially did not respond to this service. When he did, he said that although his new firm had taken over the servicing of some FFM clients, it had not taken on liability for advice by FFM.

Our adjudicator upheld Mr D's complaint. He said:

- FFM ceased to be regulated by the Financial Conduct Authority ('FCA') in 2015. But at the time of advice, in 2014, it was regulated by the FCA. So this service has jurisdiction to consider the complaint.
- The advice to Mr D was unsuitable. The advised investments were either unavailable or not viable.
- FFM had not invested Mr D's funds in the way agreed.
- FFM had ceased to trade. But the FCA confirmed it was a partnership when advice was given. Its records show FFM had three partners, the late Mr F, Mrs F and Mr H, Mr D's adviser.
- Liability for the advice therefore falls to any former partner or partners.

Mr H subsequently told the Financial Services Compensation Scheme ('FSCS') that he would be unable to meet any claims. FSCS agreed. But it concluded another partner would be able to meet claims. So it could not declare FFM to be 'in default' and thus take on liability for eligible claims. Mr H also said that he had never been a partner in FFM.

Mrs F was contacted via her solicitor by this service. Mrs F maintained that irrespective of the FCA's records, she too had never been a partner in FFM and therefore had no liability.

Agreement was not reached. So the complaint has been referred to me.

### **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Based on information provided to this service by the regulator, the Financial Conduct Authority, I am persuaded that it is appropriate for me to issue a final decision in respect of this complaint.

I have not been given any substantive evidence by FFM. Whilst I understand it no longer trades I am issuing this decision as any FFM former partner(s) may be liable for any claims.

In the absence of evidence from FFM, I have considered the merits of this complaint only on the basis of evidence from Mr D.

Mr D decided he would retire in June 2015. He expected to draw income of around £30,000 a year from three investments recommended by FFM. But he is actually getting only £7,500. This has caused him great concern. It has serious implications for his financial position.

The evidence I have seen gives me no cause to doubt Mr D's assertions about the instructions he gave FFM, the income he wanted to achieve and FFM's confirmation to him that the investments it recommended would meet these needs.

But in my view, the advice given to Mr D was not suitable. The advised investments were either misunderstood by FFM or misrepresented, both in terms of the income they would provide and the timescales for payment of such income. So I have concluded FFM did not invest Mr D's funds in the way agreed. This was neither fair to Mr D, nor reasonable practice.

It is also clear from the evidence that FFM failed to resolve matters once Mr D expressed concern. It had the opportunity to help Mr D but instead offered no practical assistance to him. Mr D formally complained to FFM about what had happened. He received no response. Finally, after this service became involved, FFM decided against reviewing Mr D's complaint, saying instead that it had no liability.

FFM said this on the basis that it had ceased to trade. But my understanding is that FFM was at the relevant time a partnership. I appreciate that the status of the surviving partners is disputed. Both say that they are incorrectly recorded as being partners in FFM at any time.

That is an issue that may ultimately have to be resolved elsewhere. But my decision here relates to Furness Financial Management.

### **my final decision**

I uphold this complaint.

Furness Financial Management ('FFM') must redress Mr D as set out below.

### **fair compensation**

My aim is to return Mr D to the position he would now be in but for FFM's unsuitable advice. In my view, Mr D's funds would have been invested in holdings similar to those he was invested in pre-transfer had suitable advice been given. I consider the underlying asset allocation of Mr D's existing pension provisions at the date of advice to have been appropriate for him.

The most pragmatic approach to redress in this complaint is to direct FFM to calculate it by comparing the notional value of Mr D's previous provisions, if he had not transferred (and with a notional allowance for the deduction of income even though I appreciate income might not have been able to have been taken from those policies), with the current value of his SIPP.

FFM must redress Mr D as follows:

1. Obtain the notional transfer value of Mr D's previous pension plans if they had not been transferred to the SIPP. That must be the value at the date of this decision.

If there are any difficulties in obtaining a notional valuation then the FTSE WMA Stock Market Income Total Return Index must be used. That is a reasonable proxy for the type of return that could have been achieved over the period in question.

FFM must assume that any contributions or withdrawals that have been made would still have occurred and on the same date. So, for example, if Mr D has actually taken income from his pension provisions post transfer then a notional allowance should be made in the calculation of the notional transfer value for those income payments and on the date that they were, in fact, made.

2. Obtain the current transfer value of Mr D's SIPP, including any outstanding charges. That must be the value at the date of this decision.
3. Pay a commercial value to buy any illiquid holdings Mr D has in his SIPP.

If there are any illiquid holdings in the SIPP then it would be best if they could be removed from the SIPP. Mr D would then be able to close the SIPP. But valuing illiquid holdings may prove difficult. In calculating redress, FFM should agree with the SIPP provider a commercial value for any illiquid holdings. It should then pay the sum agreed plus any costs and take ownership of any illiquid holdings.

If there are illiquid holdings and FFM is unable to buy them then it must give them a nil value for the purposes of calculating compensation. FFM may ask Mr D to give an undertaking to account to it for the net amount of any payment the SIPP may in future receive from the illiquid holdings. That undertaking should allow for the effect of any tax and charges on the amount Mr D may receive from such investments and any eventual sums he would be able to access from the SIPP. The business will need to meet any costs in drawing up the undertaking.

FFM must also:

4. Pay an amount into Mr D's SIPP so that the transfer value is increased to equal the value calculated in step one. This payment should take account of any available tax relief and the effect of charges.

If not possible to pay the redress into the SIPP, FFM must pay it as a cash sum to Mr D. But had it been possible to pay into the plan, it would have provided a taxable income. So the total amount should be reduced to notionally allow for any income tax that would otherwise have been paid.

The notional allowance should be calculated using Mr D's marginal rate of tax in retirement. For example, if Mr D is likely to be a basic rate taxpayer in retirement, the notional allowance would equate to a reduction in the total amount equivalent to the current basic rate of tax. However, if Mr D would have been able to take a tax free lump sum, the notional allowance should be applied to 75% of the total amount.

5. Only if there are illiquid holdings which cannot be bought then FFM should pay five years' worth of future fees owed by Mr D to the SIPP.

Had FFM done what it ought to have done then there would not be a SIPP. So it would not be fair if Mr D continued to have to pay annual SIPP fees if there are illiquid holdings preventing the SIPP from being closed. Ideally FFM would take over any illiquid holdings, thus allowing the SIPP to be closed. But third parties are involved and I do not have the power to tell them what to do. To give certainty to all parties, if there are illiquid holdings and if FFM is unable to buy them from the SIPP, then it is fair that FFM pay Mr D an upfront lump sum equivalent to five years' of SIPP fees (calculated using the previous year's fees). This gives a reasonable period to arrange for the SIPP to be closed.

Simple interest should be added to the calculated losses at 8% a year from the date of this decision until the date of payment. Tax may be due on this interest.

FFM must refund Mr D any fees he paid to it directly rather than from his SIPP. Fees paid from his SIPP are accounted for in the calculations set out above.

Finally, Mr D has been caused some distress by the advice complained about. FFM must pay Mr D £500 to compensate for that distress.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr D to accept or reject my decision before .

Terry Connor  
**ombudsman**