

complaint

Mr B has complained about the advice he received in February 2005 to invest £70,000 of his pension fund in the PIP Exempt Trust which is an Unregulated Collective Investment Scheme (UCIS) invested in property.

background

The adjudicator wrote to Origen Financial Services Limited on 12 April 2013 to say why he considered Mr B's complaint should be upheld.

In summary, although it was unclear whether the adviser had been aware of the restrictions that applied to the promotion of UCIS investments, the adjudicator was not persuaded that Mr B fell into any of the exemptions that made this possible, or that the advice was suitable.

The adjudicator did not consider that Mr B was an "*experienced investor*", or that he could have been considered one by holding other property in his pension or by having previously invested in insured pension funds.

He considered that the investment represented too great a risk and although the adviser had recorded that Mr B had been keen to invest in property and to adopt a "*medium risk strategy*"; it had not been appropriate to make a recommendation that essentially placed all of his available pension assets in one asset class (namely property).

The adjudicator did not consider that Mr B could have been regarded as accepting the investment risks purely because he was given a prospectus to read.

In response, Origen Financial Services Limited said that its advice had been given to Mr B in his role as trustee of his pension fund and not as a member. It had been established that "*The Trustees*" had historically adopted a "*medium*" risk approach to investment, with the aim of achieving returns in excess of cash deposits.

The fund prospectus had been provided, with the adviser's report highlighting the risk factors involved. The report had noted that Mr B had shown an interest in property investment for stability of rental income and potential for capital growth.

Mr B acknowledged that he was given a prospectus, but said he invested because he was advised to do so by the business. Although he had used an inheritance in 1975 to purchase two properties, he had not shown an interest in property for the stability of rental income. It had been the business that recommended the investment.

my findings

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 come to the same conclusions as the adjudicator and for the same reasons.

Whilst I acknowledge that the business says it gave Mr B advice in his role as trustee of his Small Self-Administered Scheme (SSAS), I do not consider that this meant he had any more experience of pensions and investments, or that he was not still entitled to receive suitable advice. I say this as Mr B was a trustee because the terms of his pension required him to be a trustee as well as a member.

By saying that historically “*The Trustees*” had adopted a medium risk approach to investing, I consider the business was implying that the decision about Mr B’s investments should be made by someone other than Mr B. This was clearly not the case.

Whilst Mr B may have adopted a medium risk investment strategy in the past, I am not persuaded that he was an experienced investor or that he was not reliant on the advice of the Origen Financial Services Limited adviser. Nor do I consider that a recommendation which placed almost his entire pension funding in one asset class namely property was suitable.

In addition, I consider it is clear that Origen failed to keep Mr B informed of what was happening to his investment, despite receiving regular communications from the fund administrators. I am also satisfied that despite references having been made in correspondence to arranging to visit Mr B, these were not adequately followed up.

In light of all of the above, I consider that Origen Financial Services Limited should in addition pay Mr B £200 for the distress and inconvenience caused.

my final decision

I uphold Mr B’s complaint against Origen Financial Services Limited.

fair compensation

To compensate Mr B 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 think Mr B 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 B fairly, the business should

compare

- the performance of Mr B’s investment

with

- the return illustrated by the FTSE APCIMS Stock Market Income Total Return Index (‘APCIMS index’) over the same period of time

And in addition pay directly to Mr B £200 for the distress and inconvenience caused.

If there is a loss, you should pay this to Mr B’s pension fund.

If the trustees/administrators are unable/and or unwilling to accept any part of the payment it should be paid directly to Mr B as a cash lump sum after first deducting tax at his marginal

rate of tax (to allow for the tax that he would otherwise pay on it if it was added to his SSAS arrangement and withdrawn as annualised taxable pension income).

why is this remedy suitable?

I have chosen this method of compensation because:

- Mr B wanted growth to support retirement income and was willing to accept some investment risk.
- The APCIMS index is made up of diversified indices representing different asset classes, mainly UK equities and government bonds. 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 B's circumstances and risk attitude.

how to calculate the compensation

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

fair value

This is what the investment would have been worth if it had obtained a return using the method of compensation set out above. To arrive at this value the business should:

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

actual value

This means the actual value of the investment at the date of calculation.

additional capital

Any additional sum that Mr B paid into the investment should be added to the calculation from the point it was actually paid in so it starts to accrue a return in the calculation from that point on.

withdrawals

Any withdrawal Mr B made from the investment should be deducted from the calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on.

income payments

Any regular payment that Mr B received from the investment should be deducted from the calculation at the point in time it was actually paid so it ceases to accrue any return from that point on.

If there are a large number of regular payments, to keep calculations simpler, I will accept if the business adds all the income payments to the *actual value* and compares that total with the *fair value* instead of periodically deducting them.

As noted earlier, the UCIS has been suspended since January 2008 and is likely to remain suspended to redemptions for the foreseeable future.

The fund administrator says that it is possible to transfer ownership of Mr B's investment to another owner. As the investment cannot be realised, Origen Financial Services Limited should (in addition to the compensation referred to above) purchase the investment by way of a payment to Mr B's pension fund of equivalent value to that determined by fund administrator on the date of calculation. Any costs associated with the re-registration to be covered by Origen Financial Services Limited.

Again, if the trustees/administrators are unable/and or unwilling to accept any part of this payment it should be paid directly to Mr B as a cash lump sum after first deducting tax at his marginal rate of tax (to allow for the tax that he would otherwise pay on it if it was added to his SSAS arrangement and withdrawn as annualised taxable pension income).

Adrian Hudson
Ombudsman