

complaint

Mr R has complained about advice he says he received from The ER Network (ERN), an appointed representative of Intrinsic Financial Planning Ltd (Intrinsic).

Mr R says he was given unsuitable advice to transfer his pension into a self-invested personal pension (SIPP) and invest in Sustainable AgroEnergy (SAE).

background

I set out the background to this complaint, and my provisional findings, in the provisional decision I issued in March 2018, explaining why I thought the complaint should be upheld. In summary, I said:

- We can consider a complaint under our compulsory jurisdiction if it relates to an act or omission by a firm in the carrying on of one or more listed activities, (including regulated activities), or any ancillary activities carried on by the firm in connection with those activities, (DISP2.3.1R).
- Regulated activities are specified in Part II of the FSMA 2000 (Regulated Activities) Order 2001 ("the RAO") and include advising on the merits of buying or selling a particular investment which is a security or a relevant investment (article 53 RAO), and making arrangements for another person to buy or sell or subscribe for a security or relevant investment (article 25 RAO).
- Although there's little documentary evidence, I thought it was likely that Intrinsic's appointed representative – Mr M acting on behalf of ERN – did advise Mr R to transfer his existing pension arrangements into a SIPP.
- I'd also seen evidence ERN had sent the application form to the SIPP provider, and so was responsible for arranging the investment.
- Both giving financial advice and arranging an investment are regulated activities. These were both activities for which Intrinsic accepted responsibility.
- I thought the advice to invest in SAE within the SIPP was inherently linked to the advice to transfer into the SIPP and couldn't be separated from this.
- ERN was authorised by Intrinsic to give advice on pensions. Accordingly, Intrinsic is responsible for the advice as a whole, including investing in SAE.

Mr R told us he wanted to make some further points:

- Although he did have a buy-to-let property at the time of the advice, this is no longer the case. At no point did he tell Mr M he was planning to expand, and this is a fabrication.
- He was under the impression the SIPP provider was on Intrinsic's panel, and had no reason to think otherwise.
- He'd used Mr M's services for several years, and trusted him with his financial planning as he has no knowledge in this area.
- He can confirm that no charges were made as Mr M said all charges were covered by commissions from previous mortgages he'd taken out in the past.
- He's concerned about the statement that a meeting was postponed and then re-arranged to a non-regulated environment – which isn't true. Every meeting bar one took place in the evening at his home, as this is what suited Mr M.
- More concerning is the suggestion that Mr M went through the difference between the two pensions and advised that he didn't sufficient funds to invest in commercial property. This conversation didn't take place.

- His complaint concerns the whole investment he made in the SIPP.
- He'd like to close the SIPP and get access to the cash held within it. He also has to pay management fees. He asks how he can close the SIPP.
- He'd also like to see the actual figures associated with the fair compensation. He'd also like to see an increase in the sum awarded for trouble and upset, as this falls short of the financial worries he's been caused.

Intrinsic asked for more time to respond to the provisional decision, but in the end made no further submissions.

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've not received any further submissions that persuade me to alter the conclusions I set out in my provisional decision. I've noted Mr R's points about his circumstances at the time the advice was given. But I explained in my provisional decision that I was satisfied he'd been advised by Mr M, acting on behalf of Intrinsic, but that the advice was unsuitable. Mr R's further comments don't change that.

I've also noted Mr R's comments about the redress I proposed to award. I can understand his wish to know what the financial loss will be in monetary terms. But I should explain that I set out the method by which the loss should be calculated, and this remains the same regardless of how much the loss actually amounts to. It is for Intrinsic to calculate the loss in line with my award, but it isn't required to do so until Mr R accepts the final decision. So I regret I'm unable to give Mr R an idea of how much the compensation will be.

I also appreciate Mr R's desire to close the SIPP, and I note his comment about the fees he's being charged. It's not possible for me to know how long it may take to close the SIPP, and the matter is complicated by the SIPP including an investment that's currently illiquid. But the method of compensation I proposed makes allowance for this, and includes a sum equivalent to five years' fees.

I understand Mr R's point about the financial insecurity resulting from the unsuitable advice he was given, and the upset he's been caused by this. But it remains my view that a sum of £300 is a fair and reasonable award to make in the circumstances of his complaint.

fair compensation

The redress calculation should compare the current value of Mr R's SIPP to the value of his previously held pension, had it remained with the same provider in the same funds.

Intrinsic should:

1. Obtain the notional transfer value of Mr R's previous pension plan, if it had not been transferred to the SIPP.
2. Obtain the actual transfer value of Mr R's SIPP, including any outstanding charges.

3. Pay an amount into Mr R's SIPP so that the transfer value is increased to equal the value calculated in (1). This payment should take account of any available tax relief and the effect of charges. It should also take account of interest as set out below.

In addition, Intrinsic should:

4. Pay five years' worth of future fees owed by Mr R to the SIPP.
5. Pay Mr R £300 for the trouble and upset caused.

I have explained how Intrinsic should carry this out in further detail below.

1. *Obtain the notional transfer value of Mr R's previous pension plan if this had not been transferred to the SIPP.*

This should take account of any guaranteed benefits that may have applied to the previous pension plan.

If there are any difficulties in obtaining a notional valuation, then the FTSE UK Private Investors Income total return index should be used instead. That is a reasonable proxy for the type of return that could have been achieved if suitable funds had been chosen.

2. *Obtain the actual transfer value of Mr R's SIPP, including any outstanding charges.*

This should be confirmed by the SIPP operator. If the operator has continued to take charges from the SIPP and there wasn't an adequate cash balance to meet them, it might be a negative figure.

The SAE investment should be assumed to have a nil value.

Intrinsic may ask Mr R to provide an undertaking to account to it for the net amount of any payment the SIPP may receive from the SAE investment. That undertaking should allow for the effect of any tax and charges on the amount Mr R may receive from the investments and any eventual sums he would be able to access from the SIPP. Intrinsic will need to meet any costs in drawing up the undertaking.

3. *Pay an amount into Mr R's SIPP so that the transfer value is increased to equal the value calculated in (1). This payment should take account of any available tax relief and the effect of charges. It should also take account of interest as set out below.*

If it's not possible to pay the compensation into the SIPP, Intrinsic should pay it as a cash sum to Mr R. But had it been possible to pay into the SIPP, it would have provided a taxable income. Therefore 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 R's marginal rate of tax in retirement.

Simple interest should be added at the rate of 8% a year from the date of the redress calculation until the date of payment. Income tax may be payable on this interest.

4. *Pay five years' worth of future fees owed by Mr R to the SIPP.*

Had Intrinsic given suitable advice, I don't think there would be a SIPP. It's not fair that Mr R continues to pay the annual SIPP fees if it can't be closed.

Ideally, Intrinsic should take over the investments to allow the SIPP to be closed. This is the fairest way of putting Mr R back in the position he would have been in. But I don't know how long that will take. Third parties are involved and I don't have the power to tell them what to do. To provide certainty to all parties, I think it's fair that Intrinsic pays Mr R an upfront lump sum equivalent to five years' worth of SIPP fees (calculated using the previous year's fees). This should provide a reasonable period for the parties to arrange for the SIPP to be closed. There are a number of ways they may want to seek to achieve that. It will also provide Mr R with some confidence that he will not be subject to further fees.

In my view, awarding a lump sum for an amount equivalent to five years fees strikes a fair balance. It's possible that the SAE investment could be removed from the SIPP in less than five years. But given the time it has taken to date I think it is possible that it could take a number of years more to resolve all of the issues. So using a figure of five years' worth of fees is an approximate and fair award to resolve the issue now.

5. Pay Mr R £300 for the trouble and upset caused.

Mr R has been caused some distress by the loss of his pension benefits. I think a payment of £300 is appropriate compensation for that distress.

my final decision

I uphold the complaint and require Intrinsic Financial Planning Ltd to compensate Mr R as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 12 October 2018.

Doug Mansell
ombudsman