Financial Ombudsman Service

complaint

Mr C complained that Lighthouse Advisory Services Limited gave him unsuitable advice to switch his existing personal pensions to a Self-Invested Personal Pension (SIPP). That was to enable him to invest into overseas property. Lighthouse did not consider the overall suitability of the investment as part of its advice.

background

Harlequin Property offered the opportunity to invest into resorts developed in the Caribbean. The money invested went to cover marketing expenses and sales cost, which included commission. The residue would be used for the development of the resort. Funds were not specifically earmarked for the construction of the resort the investor was buying. Third party finance may have been used and lenders may have been approached to provide loans, which might have been secured against the asset.

Mr C says he was introduced to Harlequin Property by Mr W, an appointed representative of Lighthouse. Mr C told us:

- Mr W contacted them after his late mother's probate was settled. He was dealing with his mother's estate at the time. He telephoned several times about investing in Harlequin;

- He came to their house with several brochures of Harlequin properties promoting it enthusiastically. He said that as they both liked their holidays this investment would be perfect for them. He said that he had invested with Harlequin himself, as he was so confident that Harlequin would be such a success;

- Mr W also told them that he and his wife had transferred their pensions into it. He told them they could not lose and would be mad not to invest. He said he had his lawyers go over the investment and that they could find nothing wrong with it.

- They trusted him – he was IFA to Mrs C's late mother. They had no reason to doubt what he was saying. Also the fact that he worked for a reputable company called Lighthouse Advisory they had no reason to doubt him;

- Mr C was concerned about having just lost his job and his wife had to give up hers due to ill health. Mr W told him that he would not have to work again as the investment would be far more than what he was ever earning;

- He has the handwritten figure work which show what the property would yield in a year. This was drafted by an employee at Harlequin. This was given to him when he and his wife went with Mr W to the Harlequin office in Basildon.

According to Harlequin Property Group's records, Mr C was involved in a total of three properties. They reserved one property in March 2012 and paid £1,000. They then paid £78,000.

Mr C paid a reservation fee for another property in September 2012. That was cancelled and transferred to a different property in Mr C's SIPP. This property was bought jointly with Mr and Mrs D. It was cancelled and to date £2,000 has been refunded to Mr C, which Mr and Mrs D authorised. The remaining balance on this property to be refunded is £83,000 of which £63,840 was paid by Mr C's SIPP.

Lighthouse was unable to provide any documentation from the point of sale. Mr C told us his circumstances at the time of the advice were:

- He was approximately age 60 and married;
- He was unemployed but had previously been employed, earning about £18,000 a year;
- He had four personal pensions with a total value of about £69,000;
- He held no other investments or assets.

A Heritage SIPP deed was completed by Mr C in August 2012. Mr C used £63,840 to fund part of the investment. Recorded on the form was the adviser remuneration, which was *"1% when the property starts to yield."*

One of our adjudicators investigated the complaint. He wrote to Lighthouse upholding the complaint. He thought Lighthouse had not provided suitable advice because:

- The investment in Harlequin had been omitted from the advice;
- A switch to the SIPP would likely leave Mr C worse off in retirement;
- Mr C was persuaded to invest in Harlequin via Mr W of Lighthouse throughout the entire process;
- Lighthouse had to assess whether Mr C could suitability accept the risks posed by Harlequin Property.

Lighthouse disagreed with the adjudicator for the following reasons:

- Mr C had already made an investment with Harlequin and was keen to buy more properties;
- He wished to use his pension funds in order to make this further investment. His only means of achieving this was to transfer his existing pensions into a SIPP;
- A SIPP was arranged to facilitate this investment;
- No advice was given about Harlequin. Mr C completed and signed an Appropriate Test supplied by the SIPP provider, which clearly sates "it applies to investments made without advice from a financial adviser i.e. non-advised sale";
- Had Mr C been receiving advice on the suitability of a Harlequin investment there would have been no requirement for him to have completed this test. The questions that Mr C answered within this document confirm that he was fully aware of the risks of investing in Harlequin;
- Mr C also signed a "Letter of Understanding" which clearly explained the risks associated with Harlequin investments;

- The adviser's files were lost and Lighthouse does not have a copy of the suitability report; or any evidence that a comparison of the charges of the existing pension with the SIPP was provided. This does not mean that such a comparison was not provided, just that no copies are available;

- It is clear from the evidence that Mr C's main motivation in transferring his pensions to the SIPP was to invest more in Harlequin Properties. A comparison of charges would not have altered his decision to invest;

- Lighthouse considers Mr C to be an "insistent" client. Even if he was made aware of any disadvantages about additional charges, it is likely he would have transferred to the SIPP anyway.

my findings

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

Mr C has also complained about the investment he made in Harlequin in March 2012. That is being considered as a separate complaint.

There is a dispute about whether Mr C was advised by Lighthouse's representative. I have considered that evidence very carefully. A section of the SIPP application form required financial adviser's details. These were completed with the name of the financial adviser; his company as Lighthouse financial advice; and his FSA authorisation.

Mr C also told us that the adviser had been his late mother's financial adviser. That's how Mr C came to know him and he has supplied us with copies of letters about regulated products.

The SIPP application mentions an introducer called Pearly Gray. Lighthouse has also provided a copy of a document with Mr C's signature. That is for a firm named Brickstock Wealth Management Ltd. Mr C has told us that he does not remember signing the form. The first time that Mr C came across this firm was when they wrote to him and his wife in 2013 when problems were emerging with Harlequin.

I think that it is most likely that Mr C was receiving financial advice. And the advice to start the SIPP was given by the adviser representing Lighthouse. The SIPP application contains details of the financial adviser. Mr C also told us that he thought Mr W was representing Lighthouse. Advising on the SIPP was a regulated activity. I think it's unlikely that the SIPP could have been started unless there was a regulated adviser.

Lighthouse was required to give suitable advice. It is difficult to see how a recommendation to use a SIPP can suitably be made without considering the proposed investments. Harlequin Property was an overseas development. It didn't have a track record and exposed investment to significant risk. This included the development risk; the borrowing risk and any risks associated with running the hotel. The investment did not have the protection of being regulated.

In my view, it was not suitable to advise Mr C to switch his existing pensions to a SIPP to invest in Harlequin. Lighthouse knew that Mr C had already invested in the product directly. He was effectively placing all of his investments in one basket. That was into an investment that any competent adviser ought to have realised exposed his client to significant risk. I think that the SIPP and Harlequin Property was an unsuitable investment for Mr C.

The advice should have been not to transfer to the SIPP. I think that if Mr C had been given that advice he would not have transferred. He would not then have invested in Harlequin. I'm satisfied that he only invested because he was relying on advice from Lighthouse.

Currently, the Harlequin Property investment cannot be sold. But, I think that Mr C should be returned to the position that he would now be in, if he had been given suitable advice. I consider that making an award that Lighthouse compensated Mr C in full and takes ownerships of the investment in Harlequin Property is appropriate. Mr C has been caused some worry by the loss to his pension fund. I consider that an award of £300 for the distress and inconvenience is appropriate.

fair compensation

My aim is to return Mr C to the position that he would now be in, if he had received suitable advice. It is not easy to say what that position would be, but it seems likely that Mr C would not have transferred his existing pensions into the SIPP. The award is intended to compare the value that Mr C's existing pensions would have been had they remained with the same providers and in the same funds.

The valuation of the Harlequin Property may prove difficult. I understand that there is no market for the investment. But, I consider that Mr C should be compensated now to allow him to plan for the future. For the purposes of calculating compensation, a value should be agreed with the SIPP provider as a commercial value. Lighthouse should then pay the sum agreed and take ownership of the investment.

Therefore, Lighthouse should:

1. Obtain the notional transfer value of Mr C's pension plans if the transfer to the SIPP had not taken place;

2. Obtain the current transfer value of Mr C's SIPP;

3. Pay a commercial value and take ownership of Mr C's Harlequin Property investments;

4. The loss would be represented by (1) – (2) for Mr C;

5. Any refund already paid by Harlequin to Mr C should be deducted from the loss.

The value of the SIPP should then be enhanced so that it is equal to the values calculated in (1). That should take account of any available tax relief and the effect of charges.

If it is not possible to pay the compensation into the SIPP it should be paid as a cash sum.

My understanding is that payments of compensation are not subject to income tax. The compensation should be able to be paid into a pension in the time until Mr C retires and he should be able to contribute to pension arrangements and obtain tax relief. I currently intend to say that the compensation should be reduced by 20% assuming that he could obtain tax relief at basic rate of 20%.

Mr C has been caused a substantial level of worry because of the loss of the pension funds. I think that Lighthouse should pay £300 to compensate for the distress caused.

my final decision

I uphold the complaint. Lighthouse Advisory Services Limited must calculate and pay compensation as set out above.

Under our rules, I'm required to ask Mr C to accept or reject my decision before 18 January 2016.

Roy Milne
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