Financial Ombudsman Service

complaint

Mr D's complaint was about the offer made by St. James's Place Wealth Management (PCIS) Limited. This offer of redress was for the advice given to him in 1994 to start a pension plan (with life cover included) and link this to mortgage repayment.

He initially complained that he was wrongly charged for the life cover. He said that he thought the life cover was free and that St James's Place never told him about the costs.

background

In 1994, Mr D, aged 24, had just passed his professional exams. He was single with no dependants. He earned around £20,000 yearly. He hadn't made any provision for retirement income.

St James's Place advised him to start a pension plan and use this to repay his mortgage. The mortgage amount was £52,500. He was a first time buyer.

The initial monthly payment was £40 increasing each year by 10% until age 55. The adviser recorded at the time that this plan was partly to support mortgage repayment. Mr D held a Personal Equity Plan also supporting repayment. Mr D has said to us that the lender only required the pension plan for repayment.

The pension plan included life cover of £52,500 which also increased each year by 10%. It also included a waiver benefit.

Mr D also said to us: "*The free life insurance was the most interesting part of the proposal. I felt reassured.*" He's added that he decided to pay off his mortgage but hasn't given any details. He said in a letter to St James's Place sent in June 2015 that he had maintained the interest only mortgage for 20 years.

While St James's Place has given us a copy of the 'Confidential Financial Review' and the application form, they have not been able to locate a copy of the illustration which would have been provided to Mr D at the time of advice.

The fund choice for the plan was:

St James's Place Managed	- 50%
M&G Managed	- 10%
North American Equity	- 10%
Far East Equity	- 10%
Greater European	- 20%

The Policy Conditions relevant to the plan said in the section about the 'Death Benefit Charge' (R.6.4):

This Death Benefit Charge ("the Charge") shall be due and calculated at the option of the Company either each month as at the same day of the month as the Commencement Date or each year on the anniversary of the Commencement Date in either case up to but not including the Selected Retirement Date. The amount of the Charge shall be the product of the appropriate Death Benefit Rate in the Company's then current scale of such rates and the "Sum at Risk" at the date of the calculation of the Charge.

The appropriate Death Benefit Rate taken from the scale shall be that applicable to the age next birthday of the Investor as at the anniversary of the Commencement Date preceding the date on which the Charge is being calculated……….

Mr D asked St James's Place in 2010 to stop the indexation and reduce the monthly payments to £100, net of income tax.

St James's Place wrote to Mr D in October 2010 saying:

- the payments had now reduced as requested
- the waiver benefit had therefore also reduced
- the life cover remained at £199,368.70
- the indexation had stopped.

Mr D ceased payments to the plan from August 2014. He complained about the costs of the life cover saying that they exceeded market prices. He believed that there was no cost to him when he started the plan. He added that he had never during the 20 years of the plan been told about the costs.

St James's Place explained how the life cover costs worked and how they were deducted on a monthly basis. However, they said that they couldn't be sure that the pension mortgage advice was right for Mr D. They worked out his losses on the basis that Mr D should have been advised to start a repayment mortgage instead of a pension mortgage.

They said that if the plan was re-worked to show no life cover then the transfer value would be higher (this would affect the offer of compensation).

Mr D didn't accept the offer and asked us to review his complaint.

St James's Place has given us annual statements sent to Mr D in 2014 and 2015. Neither shows the level of life cover nor the relevant costs. They are not able to give us any statements prior to 2014 but they've said they would have shown the increased monthly payments and the increased sum assured.

Our adjudicator investigated the complaint. Having looked at how the offer of redress was worked out, she asked St James's Place to re-do this using the following method. In brief, she said that St James's Place should:

1. Work out how much capital would have been repaid as at August 2014 assuming a repayment loan of £52,500 payable over 25 years. She said this date was relevant because Mr D had then stopped payments to the plan and so the link to mortgage repayment had broken.
2. This capital loss should not attract any deduction for the tax-free cash at that point. The loss should be brought forward to the calculation date with additions of actual mortgage interest, or if impractical, with simple interest at 8% a year.
3. The actual tax-fee cash available at the calculation date should then be deducted from the capital loss. This figure is Mr D's overall loss.
4. Also, St James's Place should make a comparison of the pension mortgage costs and the repayment costs. Any loss should be added to the overall capital loss. Any gain should be ignored unless there is evidence of a lasting benefit.

St James's Place agreed to do this and found that Mr D's pension mortgage costs were significantly lower than the repayments costs. They said they'd ignore this gain.

They worked out the capital loss and added that they'd pay Mr D a further sum of £500 for any distress and inconvenience caused by the wrong advice.

The adjudicator wrote to Mr D explaining the offer and that she thought it was fair and in line with our approach. She also explained that annual statements had been sent to Mr D showing the increased payments and the increased life cover. She couldn't comment on the costs of the life cover as these were worked out by the actuary.

At the time of advice, St James's Place wasn't able to comment on the cost of life cover offered by any other providers.

She also said that she couldn't comment on investment performance but was satisfied that the fund choice wasn't unsuitable for Mr D.

Mr D didn't accept the adjudicator's findings saying:

- St James's Place had changed the nature of his complaint. He accepted their admission of liability but not the amount on offer. They'd failed to ensure that the plan's funds would deliver the loan amount of £52,500. This was a condition of the contract.
- The added amount included in the repayments and the subsequent differential between increases in contributions over and above the changes in the price of money the interest rate had not been addressed.
- He explained how he wanted the offer to be worked out which would result in a payment to him of £92,400.

As the complaint couldn't be resolved, it's been passed to me.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I agree with the adjudicator and broadly for the same reasons.

Mr D has said that St James's Place has changed the nature of the complaint made by him. I accept this. But I think the complaint made about the cost of the life cover and performance of the pension meant that St James's Place should consider the suitability of the advice.

I fully understand that Mr D has his own thoughts about how he should be compensated. But I have to think about what St James's Place did wrong and the losses that caused.
The complaint Mr D made was about the cost of the life cover. I haven't seen any evidence to support the complaint that Mr D was told that the life cover wouldn't cost him anything. The terms and conditions of the plan set out how the costs are met. So I think it's more likely than not that St James's Place gave Mr D paperwork at the time of advice which confirmed how the costs were deducted.

I accept Mr D's claim that St James's Place didn't tell him the actual costs of the life cover on a regular basis. The cost of life cover was increasing. And I think St James's Place should have told Mr D how much he was paying. But, the offer made does allow for the costs incurred. I will deal with this in more detail below.

The costs of the life cover depend upon age and gender and the provider's rates when the deductions are made by unit encashment. As such, the costs will rise with age. Also, they will rise in accordance with the increase in the life cover.

I appreciate that Mr D is not happy with how his pension funds have performed. But the funds chosen appear to have been suitable for Mr D. I think it was clear that the performance wasn't guaranteed. Since the time the plan was sold investment conditions have changed. There have been changes to the taxation of pension funds; interest rates are lower; investment returns have been lower and people are living longer. These factors have all affected the returns that have been achieved.

Mr D thinks that the plan was contractually designed to provide a tax-free lump sum of £52,500. That isn't the case. The plan was investment linked and the returns were and are based on how the funds perform. So, the plan wasn't guaranteed to provide a tax-free cash of £52,500.

I think there are some issues about whether the advice was suitable for Mr D. He's complained about the cost of life cover and the performance of the pension fund. In my view, that indicates that he didn't understand how the pension was intended to repay his mortgage. So, I think it's right that he's compensated for that advice.

If Mr D hadn't been advised to use a pension to repay his mortgage I think it's reasonable to assume that he would have had a repayment mortgage. The comparison to be made has to look at the difference in the capital that would have been repaid and the difference in costs. St James's Place has agreed to ignore the savings Mr D made. Those savings were for more than the cost of the life cover Mr D had paid.

I should add that it isn't clear if the mortgage still exists but St James's Place has made an offer in line with our general approach. I'm satisfied that it's fair and reasonable in the circumstances of this case.

fair compensation

My aim is to put Mr D back in the position he'd now be in if he had a repayment mortgage.

Calculate any Capital Loss

This should be on the basis that the mortgage had been established on a repayment basis with a 25 year term instead of a pension mortgage up until the pension payments ceased in August 2014.

For capital loss, calculate A minus B, where:

A = the capital that would have been repaid on a repayment mortgage for £52,500 repayable over 25 years ceasing at the date that Mr D ceased payments to the pension plan in 2014:

and

B = a nil transfer value of the pension plan at that date.

Actual mortgage interest should be added to the capital loss figure from the date in 2014 used above, or if impractical 8% a year, until the date of my final decision.

A deduction should then be made for 25% of the transfer value of the pension plan at the date of this decision to arrive at the capital loss. If the result of the calculation is a positive amount there is a capital loss and this should be paid to Mr D.

If the result of the calculation is a negative amount there will be no loss and no compensation is payable for this part of the calculation.

Calculate any loss from difference in outgoings (cost comparison)

For relevant past outgoings, compare A and B, where:

A = the capital and interest payments for a £52,500 25-year repayment mortgage until the date the pension payments ceased in 2014, including the cost of Decreasing Term Assurance;

and

B= the actual interest payments on the £52,500 interest-only mortgage; plus 25% of the net pension payments which include the cost of the life cover for the mortgage up to the date the payments ceased in 2014.

If any compensation is payable to Mr D for the past outgoings, St James's Place should add simple interest to that amount. This should be at a rate of 8% a year from the date that payments ceased in 2014 to the date the compensation is paid.

If the repayment mortgage cost is more than the pension mortgage costs, St James's Place should ignore the notional "savings". This is because I assume Mr D arranged his day-to-day expenditure on the basis of his known outgoings. He wouldn't have been aware of the 'savings' he was making by not having a repayment mortgage.

Compensation for increased outgoings identified in the 'cost comparison' part of the calculation should be added to any capital loss compensation identified in the capital loss calculated. Equally, if less capital would have been paid off using a repayment mortgage, this difference may be offset against any compensation for increased outgoings.

St James's Place should add interest to Mr D's overall loss at the rate of 8% simple a year from the date of my final decision until payment is made.

St James's Place also agreed to pay £500 for the distress and inconvenience caused.

my final decision

For the above reasons, I consider that the latest offer from St. James's Place Wealth Management (PCIS) Limited is fair. St James's Place should re-calculate the offer given the lapse of time since the last calculation as set out above. That should include the payment of £500 for the distress and inconvenience caused.

Under our rules, I'm required to ask Mr D to accept or reject my decision before 4 May 2016.

Roy Milne
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