

complaint

Mr A has complained about the suitability of advice regarding two pension products that he bought following recommendations from Alderley Asset Management Limited (the business).

Mr A said that the first recommendation was to make 13 monthly contributions to a regular premium personal pension plan from his Self-Invested Personal Pension (SIPP). He had not been made aware that the value of his regular premium contributions were at risk nor that 50% of the first year's contributions were to be paid to the business as commission.

The second recommendation was to invest a lump sum of £18,000 net into a personal pension. Mr A later found out that £4,050 had been deducted from his fund in commission payments.

background

Mr A was introduced to the business in April 2011 for advice about his personal pension plans. In June 2011 Mr A's pension funds were transferred into a SIPP. Most of the fund was invested with a discretionary fund manager, but a cash reserve was retained for fees and other investment. The business recommended that £5,000 a month be invested from the SIPP cash reserve into a regular premium personal pension that paid the business initial commission of £30,000.

In February 2012 the business recommended that Mr A pay a personal contribution of £18,000 to another personal pension. This was set up as a regular premium contract.

One of our adjudicators investigated the complaint. He concluded that Mr A's complaint should be partially upheld. The adjudicator said that:

- There was no reason to redirect funds from an established SIPP investment into a regular premium contract. The commission paid was significantly above that which would be payable for the existing incurring additional charges.
- The business submitted no fact find or suitability letter about the February 2012 sale. Mr A did not intend to make more than one contribution. There was no benefit to Mr A contributing to a pension plan held outside his SIPP.

The adjudicator recommended that the business compensate Mr A by comparing the performance of his pension policies against the returns illustrated by the FTSE APCIMS Stock Market Income Total Return Index over the same periods of time.

If losses occurred, the adjudicator recommended that the business paid these into Mr A's SIPP. Alternatively, if a provider was unable to accept a redress payment, the lump sum was to be paid to Mr A.

The representatives acting for the business queried the use of the FTSE APCIMS Stock Market Income Total Return Index in the redress calculation. The adjudicator responded setting out the reasons for using a benchmark index. APCIMS has now been renamed as the WMA.

In the absence of a formal response to the adjudicator's view from the business, the complaint was passed to me for a final decision.

I wrote to the business explaining that I had reviewed the complaint and, in addition to the financial loss, that Mr A had suffered some distress and inconvenience. I explained that I intended to award £250 for the distress caused by the loss to his pension fund when he was approaching retirement.

my findings

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

The recommendation made to Mr A was to reinvest part of his SIPP into a pension policy on a monthly basis, over a policy term of 18 years. Funds set aside for this purpose would have run out after 20 months. I am of the view that it was wholly inappropriate for the business to recommend a monthly premium policy that could not be sustained over the longer term.

The recommendation has meant that Mr A incurred additional costs. I am not satisfied that the recommendation was suitable. In my view, Mr A was prepared to accept some investment risk. Those funds should have been invested within the SIPP.

The recommendations made by the business for both the personal pension policies meant that Mr A incurred additional costs. In my view, the recommendations made by the business for Mr A to invest into both personal pension policies were unsuitable.

The loss to Mrs A's pension fund has caused him some distress and inconvenience at a time when he is approaching retirement. A modest payment of £250 should be paid to compensate for that distress and inconvenience.

fair compensation

My aim is to put Mr A in the position he would probably now be in if he had been given suitable advice.

I think Mr A 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 A fairly, the business should compare

- the performance of Mr A's personal pension plans. The values should be the transfer values of those policies at the date of this decision.

with

- the returns illustrated by the FTSE WMA Stock Market Income Total Return Index ('WMA index') over the same periods of time

I have decided on this method of compensation because Mr A wanted growth and was prepared to accept some investment risk.

The WMA income index is a combination of diversified indices of different asset classes, mainly UK equities and government bonds. Although the comparison may not be an exact one, I consider that it is sufficiently close to assist me in putting Mr A into the position he would have been in had he not received inappropriate advice from the firm.

If there is a loss, the business should pay a sum to Mr A's SIPP so that after allowing for the effect of any available tax relief and charges that the transfer value of the SIPP is increased by the amount of the loss.

If the compensation cannot be paid into the SIPP it should be paid to Mr A as a lump sum. My understanding is that the payment of compensation is not subject to income tax.

However, if the compensation had been paid into the SIPP any income withdrawn would be subject to income tax. The compensation should be for the net of tax loss. Mr A would be entitled to 25% as a tax free cash sum and pay income tax on the balance of the compensation at his marginal rate as if he was receiving the sum as a pension benefit.

I understand that Mr A is a higher rate tax payer. A reduction of 30% should be made to the compensation if paid as cash. If Mr A will only pay income tax at basic rate in retirement the reduction should be for 15%. The business should provide details of its calculations to Mr A.

how to calculate the compensation

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

The *actual value* is the value Mr A will receive if he terminated the investment on the date of my decision.

To arrive at the *fair value*, Alderley Asset Management Limited should work out what the original investments would be worth, if they had performed in line with the WMA income index from the dates of investment to the date of my decision.

Any additional sum that Mr A paid into the investment should be added to the *fair value* calculation from the point it was actually paid in.

Any withdrawal or income payment that Mr A received from the investment should be deducted from the *fair value* calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there are a large number of regular payments, to keep calculations simpler, I will accept if the business totals all such payments and deducts that figure at the end instead of periodically deducting them.

my final decision

I uphold the complaint. My decision is that Alderley Asset Management Limited should pay Mr A:

- the amount calculated as set out above.
- £250 for the distress and inconvenience caused.

Simple interest is to be added to my award at a rate of 8% a year from the date of my decision to the date of settlement. Income tax may be payable on this interest.

Roy Milne
ombudsman