

complaint

Mr G was unclear whether C.I.B Life & Pensions Limited or the firm acting as its 'introducer' had regulatory responsibility for advice it gave him to transfer his personal pension arrangements into a self-invested personal pension (SIPP) in 2012, with a view to investing in an offshore property development.

Mr G subsequently suspended the transfers mid-way through and did not make the investment. He does not believe that his attitude to risk was correctly assessed by C.I.B and considers this has caused him to suffer a loss.

background

The complaint was investigated by one of our adjudicators. She wrote to C.I.B explaining why she considered the complaint should be upheld. In summary she concluded that:

- The key facts document from C.I.B clearly stated that the advice and recommendation was in respect of Mr G's pension arrangements.
- Mr G's existing policies did not offer any greater flexibility which Mr G needed, that was not met by his existing arrangements.
- One of the pensions (the transfer of which was fortunately aborted by Mr G) offered a guaranteed annuity rate and the potential for a terminal bonus.
- C.I.B stated that its 'normal recommendation' would be to retain any guarantees, but it failed to adequately highlight the risks of such a speculative investment.
- The adviser did not reliably establish Mr G's overall wealth and the percentage that he was prepared to invest, and as such could not establish whether the proposed investment was suitable for Mr G's attitude to risk.
- It should have advised Mr G that a transfer was not suitable given what it would reasonably have known of his circumstances – and if he wished to proceed regardless, treated him as an 'insistent customer'.
- The suitability report did not make it clear that the transfer would move the funds outside of the remit of the Financial Services Compensation Scheme.

C.I.B responded to the adjudicator's letter making the following points:

- It *did* provide advice on Mr G's existing pension arrangements and concluded that they were not suitable to meet Mr G's stated investment needs, because they were too 'low risk'. A terminal bonus is not guaranteed.
- Personal pension plans do not offer the flexible retirement solutions that are available under a SIPP.
- Based on the information provided by Mr G in the signed fact find, his proposed investment route was deemed to be acceptable. Risk warnings were given in numerous documents.
- Treating Mr G as an insistent customer would not have been an acceptable method of business.
- The combination of commercial property, a successful developer, the largest European constructor, the largest beach front resort operator, high demand and growing global tourism challenges the high risk assertion in its entirety.
- The investment levels were in excess of the formal Financial Services Compensation Scheme (FSCS) limits, so Mr G would not lose any worthwhile or effective statutory protection.

- Mr G was already engaged with his own views and knowledge on his chosen investment and the risk he wished to undertake. This tied in with his stated attitude to risk and overall circumstances as defined by his completed fact find.
- Mr G has provided a second copy of page three of the fact find showing that his pension arrangements represented a larger share of his wealth. C.I.B does not accept this is original or was provided to it at any point; other documents show that the assessment of the pension being 25% of Mr G's overall wealth was accurate.
- C.I.B cannot be held liable for Mr G's change of heart over his investment route.

C.I.B also provided further documents to be considered, including a letter from the regulator relating to another investment it had been arranging at around that time. It said that the regulator's position only changed when it issued a general announcement raising concerns about the marketing of esoteric investments through SIPPs in January 2013.

Mr G wrote to the Service in October 2013 and his letter made the following points:

- C.I.B did give him advice on the investment and the advice he received was focussed more on the investment than the pension.
- His copy of page three of the fact find was provided to him by C.I.B. The information he provided to C.I.B was accurate and he stated that a lot more than 25% of his overall wealth was in pensions.

As agreement could not be reached, the matter was referred to me for a final decision.

my findings

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

In terms of the offshore property investment, it appears that C.I.B received a referral from an introducer in respect of Mr G, as it was intended that Mr G would use his existing pension benefits as the funds for the investment. However I consider that C.I.B should have recognised that the introducer was not authorised to provide advice to Mr G on the merits or otherwise of transferring his pensions into a SIPP, and conducted its own enquiries accordingly.

Indeed C.I.B accepts that it was giving advice to the effect that a SIPP was better than Mr G's existing benefits. In my view such advice can only be given holistically with the intended investment to be made within the SIPP in mind. If the proposed investment was unsuitable, much of the argument for using the SIPP would then fall away.

I have not considered C.I.B's points about correspondence it had with the regulator in detail, as this relates to a different investment. The letter also contained a clear disclaimer that it did not constitute an identification of all possible areas of non-compliance with the regulator's rules and principles. In my view a failure to consider whether the proposed investment for Mr G was suitable in the particular circumstances of this case would be a breach of the regulator's rules and principles.

The suitability letter on page six assessed Mr G as having a 'balanced' attitude to risk – it did in fact say that Mr G wanted *'the prospect of growth offered by pooled equity investments... [and] wish[ed] to avoid the additional risks involved in investing in individual overseas stock markets'*.

The letter went on to state, *'This balanced attitude would not normally preclude you from considering an offshore/offplan commercial property investment / alternative investment, unless such investment formed a considerable part of your overall wealth... You have indicated that the total proposed investment accounts for no more than 25% of your overall wealth.'*

Based on what was known of Mr G's situation, I disagree with this assessment. There is an inherent mismatch in that Mr G was apparently not willing even to invest in pooled stock market investments overseas, yet in C.I.B's view had the appetite for an off-plan property development in Cape Verde – where the risk was not even spread across a number of investments.

Based on the fact that Mr G very quickly aborted the transfer into the SIPP – unfortunately not soon enough to avoid two of the transfers proceeding – it is also in doubt whether he agreed with the assessment of only 25% of his overall wealth forming the investment. Certainly the presence of a different page three of the fact find casts further doubt on the true position.

Notwithstanding the conflict in evidence I am far from satisfied that C.I.B adequately assessed that the offshore development was suitable for Mr G. Irrespective of his other wealth the vast majority of his pension assets, which he would need to rely on in retirement, was going into a single type of investment. I do not consider a reasonable adviser would have assessed such a recommendation as suitable for anything other than a higher risk investor.

I cannot find any evidence that Mr G required a degree of flexibility over and above that offered by his existing pension arrangements. If C.I.B is referring to other self-investment opportunities or alternative routes for taking benefits in retirement, such as drawdown, Mr G has demonstrated no further need to avail himself of those opportunities. It would only be appropriate to consider a transfer to a SIPP if and when such opportunities are actually needed.

C.I.B has stated that the non-availability of the FSCS would not have meant that Mr G lost *"any worthwhile or effective statutory protection"*. I think that it is important to note that of the four pensions being transferred only one was in excess of the FSCS limit of £50,000. This is just one of a whole number of reasons why the overseas development entailed risks that Mr G could ill afford to take.

While Mr G had attended a presentation on the investment and was aware of the basic outline, he does not appear to have any particular knowledge and experience to understand all the facets of this type of investment and make an informed judgement on its suitability. In my view, he would have relied largely on the recommendation made by the adviser in deciding what action to take with his pension.

Overall I do not consider that Mr G was fully alerted to all the risks associated with the transfer. On the balance of the evidence available, I have not been persuaded that Mr G would have chosen to transfer had he been suitably advised and informed. Given that in any event Mr G aborted the investment process, I strongly doubt that he would have still been willing to proceed as an insistent customer. C.I.B's comment that it would not be able to do business on that basis speaks for itself in that regard.

fair compensation

In respect of the two policies that were actually transferred to the SIPP, I consider that Mr G would have remained invested in those policies in the same funds – but having ceased contributions, if any were still being paid (as no such contributions were paid to the SIPP).

I direct that C.I.B should calculate and pay Mr G compensation of $C + D$, where:

A = The total notional transfer values of the two transferred plans at the date of this decision, assuming no further contributions had been paid and they remained in the same funds;

B = The actual transfer value of the SIPP at the date of this decision;

$C = A - B$;

D = Interest on C at the rate of 8% per year simple from the date of this decision to the date redress is actually paid.

If the calculation results in a loss, C.I.B should pay the sum to Mr G's pension plan allowing for any tax relief and initial investment costs. If the SIPP provider will not accept redress payments, the sum should be paid direct to Mr G as a lump sum less a deduction of 20%. This deduction is intended to account for tax relief on later reinvestment into the pension. C.I.B should provide details of its calculations to Mr G.

The adjudicator mentioned that C.I.B should refund the fees Mr G paid for the pension advice and administration. For the avoidance of doubt, these fees were actually paid from the SIPP itself and are already taken into account in the above comparison.

my final decision

I uphold Mr G's complaint against C.I.B Life & Pensions Limited and award redress to Mr G as calculated above.

Gideon Moore
ombudsman