

complaint

Mr W's complaint against Archer Bramley Limited relates to the advice he received to transfer his personal pension plan into a self-invested personal pension plan (SIPP) and to then invest his fund in the Dunas Beach Property Resort.

Mr W has complained that when he wanted to take a lump sum from his plan at age 55 it was not possible to take any benefits from the plan, as the funds held were in an unregulated investment that could not be realised.

background

The complaint was investigated by one of our adjudicators. He set out the background to this complaint and his findings in March 2014. I will briefly summarise the circumstances here for the sake of clarity.

Mr W initially met with a consultant from an unregulated firm who apparently made Mr W aware of the potential to invest into an overseas property development, the Dunas Beach Resort. This was fractional share of an apartment in a development in Cape Verde.

The unregulated firm referred Mr W to Wallwood, an appointed representative of Archer Bramley Ltd to carry out a review of his personal pension plan. Wallwood in turn referred Mr W to Archer Bramley Ltd. They established a SIPP which was set up with a transfer from his personal pension plan in order that Mr W could invest into the Dunas Beach Property Resort investment.

Less than a year after taking out the SIPP, as Mr W approached age 55 he enquired about accessing the lump sum from his pension. However he was unable to do so because the investment was illiquid as the property development had not been completed.

The adjudicator upheld Mr W's complaint and made the following points:

- Mr W was aged 54 when he met with Archer Bramley Ltd. He was an inexperienced investor and had a balanced attitude towards investment risk, recorded as 4 on a scale of 1 to 7.
- Archer Bramley Ltd had clearly given the advice to Mr W to transfer his personal pension to the SIPP and that a key reason for setting up the SIPP was to accommodate the Dunas Beach Property Resort investment.
- The adjudicator referred to the FSA issuing an alert in January 2013 regarding such advice, this said that "*It should be particularly clear to financial advisers that, where a customer seeks advice on a pension transfer in implementing a wider investment strategy, the advice on the pension transfer must take account of the overall investment strategy the customer is contemplating.*" While he noted that this alert was issued after the date of the advice he considered that it was clarifying the FSA's position on such transactions and did not just apply to advice given after that date.
- While it appeared that Archer Bramley Ltd did not advise Mr W to invest into the Dunas Beach Property Resort investment he did not consider it was reasonable to separate the advice to set up the SIPP from the subsequent investment. He therefore

considered that Archer Bramley Ltd was not only responsible for the advice given to set up the SIPP but also the associated Dunas Beach Resort property investment.

- The transfer value from the personal pension was approximately £23,000 in August 2012. Following the transfer to the SIPP approximately £19,000 was invested in the fund in October 2012.
- The Dunas Beach Property Resort investment was relatively high risk and the fact that this was Mr W's only pension investment apart from a small amount held as cash in the SIPP bank account, meant the associated risk increased and was not in line with Mr W's investment risk profile.
- If Mr W had retained his personal pension plan he would have been in a position to access his benefits at age 55 in line with his wishes.
- The adjudicator recommended that Archer Bramley Ltd take ownership of the Dunas Beach Property Resort investment in return for a payment equal to its current value and calculate redress on the basis that he should have retained his personal pension, and then taken a tax free cash sum and purchased an annuity to supplement his income benefits from this plan at age 55.

As Archer Bramley Ltd did not respond to the adjudicator's view he confirmed to both parties that he would refer the case to an ombudsman to come to a final decision. Archer Bramley Ltd responded saying they intended to submit a full response to the adjudicator's view but did say:

- The fact that Mr W had initially withdrawn his complaint against them indicated that he himself believed that the problem did not lie with them but with the unregulated introducer.
- They commented on the basis the adjudicator recommended for calculating redress and the fact that he had said that they should take ownership of the Dunas investment in return for a payment equal to its current value. They said that any excess paid to the SIPP over the known valuation, which was only available on an historic basis, could be viewed as either a third-party contribution on behalf of the member or an unauthorised payment by a third party to the SIPP.

The adjudicator responded saying that if Archer Bramley Ltd paid what the current valuation of the investment was he could not envisage that there should be adverse consequences. Mr W's SIPP would effectively have the same value only instead of it holding the Dunas Beach Property Resort investment it would hold cash which he could realise without delay.

The adjudicator responded setting out a revised basis of redress and said that if it was not possible to obtain a current valuation or if the SIPP provider would not agree to Archer Bramley Ltd taking ownership of the asset then they should assume it had a zero value. In exchange they could require Mr W to provide an irrevocable undertaking to pay them such sums as were realised in respect of the investment or to transfer ownership to Archer Bramley if it became possible. He also said that Archer Bramley should meet any associated costs and confirmed that he would be referring the file to an ombudsman and that if they did have any further submissions that they make them within two weeks. No further submissions were made.

my findings

I have carefully considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I have come to a same conclusion as the adjudicator.

I note that Wallwood was an appointed representative of Archer Bramley Ltd and Wallwood carried out an initial review of Mr W's personal pension and established his balanced attitude towards investment risk. Wallwood also recorded that Mr W was divorced, unemployed and wished to retire at age 65. It appears that at some stage during the review the unregulated business introduced Mr W to the idea of investing his pension fund in a property within the Dunas Beach Resort. Due to this choice of investment, Mr W was referred to Archer Bramley Ltd to arrange a suitable pension plan to make this investment.

Archer Bramley Ltd advised Mr W to transfer his personal pension to the SIPP. Although Archer Bramley Ltd have stated that they were not responsible for Mr W's investment decision, it is clear that the SIPP was recommended in order to facilitate the purchase of the property at the Dunas Beach Resort and they were fully aware of the intended investment. The suitability of the advice to set up the SIPP and how it was invested were I consider inextricably linked. Therefore, for the reasons explained by the adjudicator I consider that Archer Bramley Ltd had a responsibility for ensuring that the whole transaction including the Dunas Beach investment was suitable for Mr W.

With regard to the suitability of the investment I consider that buying an overseas property off plan does represent a high risk transaction and the risk was further increased as the investment represented the whole of Mr W's private pension provision. In view of this I agree the adjudicator that it was not in line with Mr W's risk profile and was therefore unsuitable. I also consider that Mr W should have been advised against transferring and should have instead retained his original personal pension plan.

Archer Bramley Ltd appeared to be unaware at the time the SIPP was set up, that Mr W wished to take his pension benefits at age 55. Despite this if he had been advised appropriately, Mr W would have retained his personal pension and if he had would have been able to access his pension benefits in June 2013 when he was aged 55 as he wished. Had he retained his benefits in his personal pension plan then at age 55 I consider he would have taken the lump sum and in light of the relatively small size of his fund and the costs associated with setting up and running a SIPP that it would be appropriate to draw a pension from the plan at that point.

I note that Archer Bramley Ltd have commented on the basis of redress that the adjudicator recommended. In my opinion the Dunas Beach investment was unsuitable and therefore that it would not be reasonable to require Mr W to have to wait until the investment is realised before he can access the benefits from his fund. I agree with the adjudicator that it is appropriate for Archer Bramley Ltd to take ownership of the asset if possible.

Whilst I agree with the redress proposed by the adjudicator I have expressed this in a simpler way.

fair compensation

To compensate Mr W fairly, Archer Bramley Ltd should put him as close to the position he would probably now be in had he retained his personal plan and taken a lump sum and

set up a pension. As a fair and practical approach to calculate redress it is assumed that benefits would have been paid based on a valuation and start date of 1 July 2013 shortly after Mr W's 55th birthday.

1. Obtain the notional transfer value of the original pension plan as at 1 July 2013 on the assumption that the transfer to the SIPP had not taken place.
2. Determine the notional tax free lump sum and notional pension that could have been provided to Mr W as at 1 July 2013 based on the notional transfer value that was determined in (1). The annuity should be with a competitive annuity provider and should be payable monthly on a level single life basis with a five year guarantee.
3. The past loss should be determined as the accumulated value as at the date of calculation of the notional tax free lump sum and net annuity payments that Mr W would have received in (2) less the accumulated value of any past payments (net of tax where appropriate) that Mr W has received since 1 July 2013. Interest at a rate of 8% per annum simple should be allowed for in these calculations.
4. Any shortfall in (3) should be paid to Mr W as a lump sum. Interest at the rate of 8% per annum simple should be added to the amount due in (3) from the date of calculation to the date of settlement.
5. The business should secure for Mr W the gross notional annuity in (2) with a competitive annuity provider.
6. The current cost of the annuity in (5) should be met from the current transfer value of the SIPP with any shortfall being met by the business. If it is not possible to sell the investment in the Dunas Beach Property Resort then it should be taken as having a nil value and Mr W should give an irrevocable undertaking to pay to the business such sums as are realised or become realisable (after deducting any tax that is payable by Mr W on such receipts).
7. Pay Mr W £300 in addition for the distress and inconvenience that he has suffered.

my final decision

I uphold Mr W's complaint. Archer Bramley Ltd.

I direct Archer Bramley Ltd to carry out the loss assessment set out above. If this shows that redress is due then this should be paid to Mr W as set out above.

Adrian Hudson
Ombudsman