

complaint

Mrs P complained about the advice she was given by Professional Intermediary Introducers Limited to transfer her pension so that she could invest in an unregulated overseas property development which subsequently failed.

background

In May 2011 Mrs P met with the adviser, an authorised representative of Professional Intermediary Introducers Limited, to discuss her pension requirements. Mrs P had a small self-administered scheme (SSAS) with her then husband. She also had a personal pension with a value of around £110,000. Mrs P had previously transferred preserved benefits from an occupational pension scheme (OPS) into this personal pension.

It seems that it had been intended to transfer the OPS to the SSAS however that had not been possible. So the personal pension had been set up to receive the OPS transfer.

Mrs P's joint investments with her then husband were noted as a share portfolio valued at £245,000 and cash savings of £160,000.

The personal pension plan was transferred to a self-invested personal pension (SIPP) in September 2011 and in October 2011 £96,000 was invested in Harlequin Property.

One of our adjudicators considered the complaint and recommended it should be upheld. He said:

- The evidence indicated Mrs P had already transferred out of the OPS to the personal pension at the time of the advice to invest in Harlequin. It appeared another firm was responsible for the advice to transfer the OPS benefits.
- It was clear that Professional Intermediary Introducers Limited was responsible for the advice to switch the personal pension plan to the SIPP in order to invest in Harlequin Property.
- Mrs P's attitude to risk was noted as '8' and described as motivated. However, Mrs P said she was only ever a cautious investor.
- The adjudicator concluded that because Mrs P had a joint share portfolio and was a trustee of the SSAS that she had some investment experience and was willing to accept some investment risk.
- He was not persuaded that Mrs P's investment experience was such that it was suitable to invest the majority of her personal pension in a single asset class with an overseas property development.
- Harlequin was an unregulated investment and came with significant risks such as illiquidity, the risk of the development falling behind plan and/or not being completed. There was also no ready resale market to easily realise her capital.
- Investments such as Harlequin were only suitable for a relatively small proportion of an experienced investor's portfolio. According to the regulators' good and poor practice report of July 2010, between 3% and 5%. Even if Mrs P was an experienced investor it wasn't suitable to recommend investing over 90% of her pension into Harlequin Property.
- Mrs P appeared to have an existing investment in Harlequin owned jointly with her then husband. That was further reason she should have been advised against investing more money into Harlequin via her pension.

Professional Intermediary Introducers Limited disagreed with the adjudicator and made a number of comments. A different adjudicator considered these arguments and also reviewed the case. He found he was in agreement with the previous adjudicator's recommendation of how the complaint should be settled. He said:

- A pension was an individual contract so whilst the adviser might have always dealt with Mrs P and her husband jointly, the advice for Mrs P's pension should have taken her individual circumstances in account. That would avoid the need for hindsight which was pertinent now that they had separated.
- Had the adviser considered Mrs P's best interests then it was reasonable to conclude that with suitable advice she would have invested differently.
- He agreed that another firm had been involved in setting up the SSAS and transferring Mrs P's benefits from her OPS to the personal pension. However, he was not persuaded the transfer to the SIPP was without advice and it was more likely she was advised which SIPP would accommodate the Harlequin investment.
- The adviser had met Mrs P and her then husband at a conference about Harlequin and therefore he was presumably well informed about the investment and its inherent risks. He had the opportunity to provide suitable advice instead of facilitating what he should have recognised as an unsuitable investment.

Professional Intermediary Introducers Limited did not agree and asked for the complaint to be reviewed. It made further comments which the adjudicator considered however, he was not persuaded to change his opinion and so this case has been referred to me for a decision.

my findings

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

I agree with the adjudicators and uphold this complaint. The adviser was under a duty to act in the best interests of Mrs P. I'm not satisfied that Mrs P selected this SIPP and the Harlequin investment without advice. The SIPP could not be recommended in isolation from the proposed investments.

I'm satisfied that the adviser knew that Mrs P intended to invest in Harlequin and ought to have advised against it. It was not suitable for her or in her best interest to invest almost all her personal pension into this UCIS. It was a high risk investment with potential liquidity issues as the adjudicator has said.

I note the reference that has been made to the earlier advice Mrs P had received to transfer her OPS. But that advice was given by another business and so it is not considered here. I'm satisfied that Mrs P has suffered loss flowing from the arrangement of the SIPP which Professional Intermediary Introducers Limited is responsible for.

fair compensation

My aim is that Mrs P should be put as closely as possible into the position she would probably now be in if she had been given suitable advice.

I take the view that Mrs P would have invested differently. It's not possible to say *precisely* what she would have done differently. But I'm satisfied that what I've set out below is fair

and reasonable given Mrs P's circumstances and objectives when she invested.

what should Professional Intermediary Introducers Limited do?

To compensate Mrs P fairly, Professional Intermediary Introducers Limited must:

- Compare the performance of Mrs P's investment with that of the benchmark shown below. If the *fair value* is greater than the *actual value* there is a loss and compensation is payable. If the *actual value* is greater than the *fair value*, no compensation is payable.

Professional Intermediary Introducers Limited should add interest as set out below.

If there is a loss, Professional Intermediary Introducers Limited should pay into Mrs P's pension plan to increase its value by the total amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief.

Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.

If Professional Intermediary Introducers Limited is unable to pay the total amount into Mrs P's pension plan, it should pay that amount direct to her. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the total amount should be reduced to *notionally* allow for any income tax that would otherwise have been paid.

The *notional* allowance should be calculated using Mrs P's actual or expected marginal rate of tax at her selected retirement age.

For example, if Mrs P is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal the current basic rate of tax. However, if Mrs P would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation.

- Pay to Mrs P £300 for the impact on her retirement planning.

Income tax may be payable on any interest paid. If Professional Intermediary Introducers Limited deducts income tax from the interest it should tell Mrs P how much has been taken off. Professional Intermediary Introducers Limited should give Mrs P a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

investment name	status	benchmark	from ("start date")	to ("end date")	additional interest
SIPP	still exists	FTSE UK Private Investors Income Total Return Index	date of investment	date of my decision	8% simple per year from date of decision to date of settlement (if compensation is not paid

					within 28 days of the business being notified of acceptance)
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actual value

This means the actual amount payable from the investment at the end date.

It may be difficult to find the *actual value* of the investment. So, the *actual value* should be assumed to be nil to arrive at fair compensation. Professional Intermediary Introducers Limited should take ownership of the illiquid investment by paying a commercial value acceptable to the pension provider. This amount should be deducted from the compensation and the balance paid as I set out above.

If Professional Intermediary Introducers Limited is unable to purchase the investment, the *actual value* should be assumed to be nil for the purpose of calculation. Professional Intermediary Introducers Limited may require that Mrs P provides an undertaking to pay it any amount she may receive from the investment in the future. That undertaking must allow for any tax and charges that would be incurred on drawing the receipt from the pension plan. Professional Intermediary Introducers Limited will need to meet any costs in drawing up the undertaking.

fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

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

Any withdrawal, income or other distribution out of the investment should be deducted from the *fair value* 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'll accept if Professional Intermediary Introducers Limited totals all those payments and deducts that figure at the end instead of deducting periodically.

why is this remedy suitable?

I've decided on this method of compensation because:

- Mrs P wanted capital growth and was willing to accept some investment risk.
- The FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return.
- Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mrs P's circumstances and risk attitude.

The SIPP only exists because of the Harlequin Property investment. In order for the SIPP

to be closed and further SIPP fees prevented, this investment needs to be removed. But if the business can't buy it Mrs P is faced with future SIPP fees. I think it is fair to assume five years' of future SIPP fees. So, if the business can't buy the investment, it should pay an amount equal to five years of SIPP fees based on the current tariff. This is in addition to the compensation calculated using a nil value for the investment.

In addition, Mrs P now needs to get further advice as to how to invest her pension. Professional Intermediary should therefore pay reasonable advice costs up to £600 plus VAT.

my final decision

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £150,000, plus any interest and/or costs that I consider appropriate. If I consider that fair compensation exceeds £150,000, I may recommend the business to pay the balance.

determination and award: I uphold the complaint. I consider that fair compensation should be calculated as set out above. My decision is that Professional Intermediary Introducers Limited should pay Mrs P the amount produced by that calculation – up to a maximum of £150,000 (including distress and/or inconvenience but excluding costs) plus any interest set out above.

If Professional Intermediary Introducers Limited does not pay the recommended amount, then any investment currently illiquid should be retained by Mrs P. This is until any future benefit that she may receive from the investment together with the compensation paid by Professional Intermediary Introducers Limited (excluding any interest) equates to the full fair compensation as set out above.

Professional Intermediary Introducers Limited may request an undertaking from Mrs P that either she repays to Professional Intermediary Introducers Limited any amount Mrs P may receive from the investment thereafter or if possible, transfers the investment at that point.

Mrs P should be aware that any such amount would be paid into her pension plan so she may have to realise other assets in order to meet the undertaking.

Professional Intermediary Introducers Limited should provide details of its calculation to Mrs P in a clear, simple format.

recommendation: If the amount produced by the calculation of fair compensation exceeds £150,000, I recommend that Professional Intermediary Introducers Limited pays Mrs P the balance plus any interest on the balance as set out above.

This recommendation is not part of my determination or award. It does not bind Professional Intermediary Introducers Limited. It is unlikely that Mrs P can accept my decision and go to court to ask for the balance. Mrs P may want to consider getting independent legal advice before deciding whether to accept this decision.

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs P either to accept or reject my decision before 4 January 2019.

Keith Taylor
ombudsman