complaint

Mr B complained about Pacific IFA Limited. He said he was given bad advice by Pacific to transfer his personal pension to a self-invested personal pension (SIPP).

The SIPP was set up to allow Mr B to invest money in Harlequin Resorts (St Lucia) Limited, an unregulated property fund ("the fund").

background

In June 2009 Mr B was introduced to Harlequin Property by his brother-in-law, who worked in financial planning and investment advice. Mr B had in the past invested money on the recommendation of his brother-in-law.

At a presentation in June 2009, hosted by Harlequin, Mr B wrote a cheque for £1,000 reserving him an investment in the fund.

Pacific said they were introduced to Mr B by his brother-in-law on 18 June 2009. Mr B didn't recall this introduction.

On 26 June 2009, Harlequin wrote to Mr B and confirmed his reservation. It confirmed Mr B would initially be investing £36,000. This represented a 30% deposit. The letter explained this would come from his SIPP. The letter from Harlequin informed Mr B that his SIPP provider had requested that copies of the contract were sent to Pacific. This is despite the fact that the SIPP at this stage hadn't been set up.

Pacific met with Mr B on 6 July 2009. A financial review was completed which was signed by Mr B. Pacific said at this meeting it agreed it would only advise Mr B on the suitability of an appropriate SIPP to act as a wrapper for the fund. Pacific said it agreed with Mr B that Pacific wouldn't advise him on the suitability of the fund.

On 25 August 2009, Pacific sent Mr B a suitability report regarding the SIPP. It said that Pacific weren't associated with Harlequin and that it wasn't offering any advice on the suitability of the fund for Mr B. This included not assessing whether the fund was suitable for Mr B's needs, aspirations or attitude to risk.

Pacific arranged for the SIPP to be set up in September 2009 and the funds were transferred from Mr B's personal pension. In November 2009 Mr B received confirmation that Harlequin had been paid the £36,000 deposit. To date, Mr B's investment property has not been built and it's likely he's lost all of his original investment.

In October 2014, Mr B complained to Pacific. It said Pacific failed to assess whether the fund was a suitable investment for him. Pacific rejected that complaint. It said, in summary:

- Mr B had already made his mind up to invest in the fund before meeting Pacific.
- Pacific only advised on the suitability of the SIPP and not the underlying investment. That was the scope of the advice agreed between the parties.
- Mr B had an adventurous attitude to risk.

- Pacific was under no regulatory or legal obligation to consider the suitability of the fund for Mr B and advise him on this.

- Pacific didn't have sufficient information about the fund to have advised him on it in any event.

- Mr B invested further money through his SIPP into an unregulated fund in 2011 without advice from Pacific. This shows that he didn't want investment advice when making such decisions.

Mr B disagreed and his complaint was brought to this service. One of our adjudicator's considered the complaint, but didn't uphold it. He thought that Pacific failed to advise Mr B properly and should've considered the suitability of the fund for Mr B. But, he said, even if Mr B had been properly advised by Pacific, Mr B would've still invested in the fund. This was based on the relationship Mr B had with his brother-in-law and the trust he placed in him.

Mr B disagreed with the adjudicator. He said:

- His brother-in-law was no longer a relative in 2009 as he was separated from Mr B's sister.

- There was no exceptional rapport or trust between Mr B and his brother-in-law. It was simply because of the optimistic projections he was given that he invested in 2009 and again in 2011.

- Had he been advised properly by Pacific he wouldn't have invested in the fund. He denied Pacific ever told him the fund was a high risk investment.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. In doing so, I don't uphold Mr B's complaint. In summary - I agree with the adjudicator that even if Mr B had been given suitable advice by Pacific, on balance, he would have continued to invest in the fund.

Before I set out my reasons as to why I think Mr B would've invested anyway, I'll first deal with the arguments put forward by Pacific around the limitations of its advice. I don't intend to address all the points in detail as I haven't upheld the complaint against it. But I don't accept their argument that they didn't have to advise Mr B on the suitability of the fund held within the SIPP. I say this for the following reasons:

- Pacific had a duty to take reasonable care to ensure the suitability of its advice for Mr B and to act in his best interests.

- This is an independent duty. It can't be avoided because a third party told Mr B to invest in the fund.

- Pacific knew that Mr B would invest almost all of his SIPP into the fund. But failed to consider whether the transfer of his personal pension into a SIPP for that sole purpose was suitable. It's a misunderstanding of COBS 9.2.1R and COBS 9.2.2R to suggest these rules allowed Pacific to advise solely on the 'wrapper' in these circumstances without having any obligation to consider the suitability of the 'filling.' If

the underlying investment isn't suitable than the overall advice is unlikely to be suitable.

- If Pacific didn't have sufficient information about the fund to advise on its suitability, then it had a responsibility to find out more - or not advise on the SIPP. COBS 9.2.6(R) makes this clear. The terms of the retainer with Mr B don't provide a justification to carve this obligation out.

- Pacific highlighted a number of cases which it said assisted its argument that it was free to agree to limit the scope of the advice it gave. These focused largely on the relationship between contract and torts. I've considered these cases and particular their specific facts and circumstances. I don't think they assist Pacific at all. I'm also mindful of the statutory remit of this service to decide cases on the basis of what's fair and reasonable. We must take account of relevant law but are not bound by it.

While I think Pacific did do something wrong, I don't think it made a difference to Mr B's ultimate decision to invest in the fund. I've given careful consideration to the submissions put forward by Mr B and the additional background he provided. I have to decide, on balance, what Mr B would've done had Pacific given him appropriate advice. For the following reasons, I think he still would've invested:

- Mr B had other pension arrangements in place. By this I don't mean this wasn't a significant sum of money for Mr B. But the investment in the SIPP wasn't his only source of pension. He had a deferred benefits scheme from an earlier employer and another personal pension. He also held further funds in shares and an ISA. I think this would've been material to his decision. He had some capacity for loss.

- I understand Mr B disputes the strength of the relationship he had with his brother-in-law. But I think this was a significant factor in his decision to invest. By Mr B's own admission he invested before 2009 in a bond recommended by his brother-in-law. And invested in 2011 in a further unregulated fund, again suggested by his brother-in-law. While that relationship has now broken down, I think it played an important role in Mr B's investment choice in 2009.

  It's clear that Mr B trusted him at the time. And that it was on the strength of his brother-in-law's assurances that he invested in the fund. Would it have made a difference if he'd been given suitable advice by Pacific not to invest in the fund? Looking back it's always difficult to predict what someone would've done. But I think, on balance, it wouldn't have made a difference. Mr B had no previous relationship with Pacific. Even if they'd informed him of the risks involved, I think he still would have relied on his brother-in-laws assurances. While his brother-in-law wasn't a regulated advisor at the time, it's of note that he had a history of working as a financial and investment adviser. Listening to the calls between Mr B and our adjudicator, I don't think Mr B appreciated the difference between regulated and unregulated advisors, and therefore I don't think he would've taken Pacific's advice over his brother-in-law's. Albeit, in hindsight, I've no doubt he would now take a different course of action.

- He had already written a cheque for £1,000 reserving a specific studio before meeting Pacific and had withdrawn money from his bond to invest in the fund. I don't think on their own these factors would be decisive. But when taking everything into account it further showed Mr B's intent to invest.

I understand Mr B's frustrations with what happened and what he was told about the risks of the investment by his brother-in-law. I also recognise his concerns about the relationship between his brother-in-law and Pacific. But, I've seen no evidence that Pacific were responsible for what he was told by his brother-in-law in 2009. For the above reasons, I think even if Pacific had given suitable advice, he still would've continued to invest in the fund. As a result I don't uphold Mr B's complaint.

my final decision

For the reasons outlined above, I don't uphold Mr B's complaint against Pacific IFA Limited.

Under our rules, I'm required to ask Mr B to accept or reject my decision before 14 April 2016.

Benjamin Taylor
ombudsman