Case Study: Pensions

UNSUITABLE INVESTMENT ADVICE IN AN INDIVIDUAL PENSION FUND

Themes: unsuitable investment advice, appropriate loss calculation, opportunity cost, speculative or consequential loss, CIFO handling of situations where own staff are conflicted.

Mrs C complained that her pensions adviser had given unsuitable investment advice and was offering inadequate compensation.

The pensions adviser wrote to Mrs C with its advice on her pension. The main recommendation was that her existing personal pension should be transferred to a retirement annuity trust scheme, or RATS, and invested in certain investments suggested by the pension adviser. This included putting £25,000, about 20% of Mrs C's pension assets, in a type of investment called a 'structured note'.

A little over two years later, Mrs C complained to the pension adviser about the investment advice. Payments totalling £6,120 had been made from the structure not to her RATS account, but the underlying value of the note had since fallen and it no longer had any market value.

The pension adviser conceded that the structured note was not a suitable investment in Mrs C's circumstances. If offered to pay the difference between the original £25,000 invested and the value of the note, less the £6,120 received as income. In effect, Mrs C would have ended up with the £25,000 originally invested.

Mrs C rejected that and referred her complaint to us. She wanted a higher amount of compensation, plus additional compensation for a missed investment opportunity that she said she could otherwise have pursued with a 30% tax free lump sum withdrawn from her RATS account.

A senior member of our staff knew Mrs C personally, so a potential conflict of interest arose. To ensure the complaint would be seen to be handled impartially, our Board of Directors appointed a temporary ombudsman for this case. He was an outside expert with extensive experience in the resolution of pension-related complaints and handled the complaint outside our office.

Conclusion

Having investigated the matter, and after considering the parties' representation on his initial views, the temporary ombudsman issued his decision. He decided that Mrs C should be paid what she would have received (in capital and income) if the £25,000 had been appropriately invested – calculated according to a benchmark for a balanced-asset portfolio – less the income of £6,120 that she had actually received. This should be paid into the RATS account as a tax free adjustment. She should also be paid directly compensation of £300 for inconvenience.

The ombudsman did not award compensation for the missed business opportunity. He concluded that there was insufficient evidence that this arose from the unsuitable investment advice or from the dispute about the appropriate level of compensation. Mrs C could have withdrawn the 30% at any time, but chose not to do so pending resolution of her complaint.