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31 October 2012

Julie Irvine
Deputy Pensions Ombudsman
The Office of the Pensions Ombudsman
11 Belgrave Road
London
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Dear Ms Irvine

Determination 88822 – Julian Holy SIPP

I refer to case reference 88822 regarding the complaint brought by Mr Julian Holy against Hornbuckle Mitchell. I write as Chairman of the Association of Member-Directed Pension Schemes, the trade body for SIPP providers.

Your determination was of great interest for the SIPP industry. SIPP providers have struggled in recent years to reconcile the true purpose of a SIPP (to allow the member or their adviser to direct how their pension fund is invested) with the responsibility of each provider to assess the investments that are permitted within their SIPP product. Your ruling provided some helpful insight, but of course made reference to the SIPP provider's particular literature and to the investment being made prior to the 2009 thematic review conducted by the FSA.

I do not know to what extent you have a mandate to provide general guidance in the absence of particular cases, or to invite commentary from the industry (perhaps myself as Chairman of AMPS) in relation to particular rulings. However I thought it would be useful to set out my understanding of the issues having been party to discussions with the FSA in my industry role. My firm is also a SIPP provider.

My understanding is that the FSA expect SIPP providers to manage their business in a sound manner, which requires knowledge of the risk that the underlying investments of their SIPP exposes them to. A good way of achieving this is to conduct some due diligence on the investments that are being held. This would include cash accounts, discretionary fund managers, commercial property (primarily to establish that it is wholly non-residential) as well as more esoteric investments.

The sole purpose of this due diligence is for the benefit of the SIPP provider to understand the investments that are being purchased and the risk to their business. This is not the same as due diligence on behalf of a member to unearth whether an investment is suitable for them or to assess whether an investment is likely to produce the projected returns.

Due diligence that a SIPP provider conducts may determine whether the investment is "permitted" under HMRC regulations (i.e. would not be taxable property) or allowable under their Trust Deed & Rules (or policy terms etc.).

Given the apparent rise in investment fraud in the last two years or so, many SIPP providers are undertaking a higher level of due diligence, noting that a concentration of investors in one investment that turns out to be fraudulent may create higher risk to their business.

This enhanced due diligence is again to enable the SIPP provider to manage their appetite for risk across their whole business and agreement to its acceptance should not indicate to the SIPP member that no fraud is present. The level of due diligence conducted by the SIPP provider is up to them – the more thorough it is, the more knowledge they will have of the potential investments but of course that increases investment costs for the consumer.

None of the above really changed as a result of the 2009 thematic review. The SIPP providers now have a better understanding of what the FSA requires in terms of managing the risk of running a SIPP business.

The thematic review placed no responsibility on SIPP providers for assessing an investment as being suitable for a particular investor. Nor did it introduce a requirement that SIPP providers are responsible for determining whether an investment would meet its projected returns. Nor did it introduce a requirement that SIPP providers are responsible for underwriting or guaranteeing the legitimacy of an investment, even after completing internal due diligence. The due diligence process is simply for the benefit of SIPP providers to enable them to run their business in a robust manner.

In summary, I welcome the determination of case 88822 and firmly believe that investment choice primarily remains the responsibility of the SIPP member or their investment adviser. The SIPP provider is only likely to be responsible if it has misinterpreted HMRC rules and allowed an investment that actually creates tax charges. The 2009 thematic review did not change this.

I imagine the above is known to you, but thought it would be helpful for you to have commentary from AMPS having worked with the FSA regarding these issues for many years. I would be pleased to discuss this matter further with you.

Yours sincerely

Andrew Roberts
Chairman
Association of Member-Directed Pension Schemes