

Ombudsman's Determination

Applicant	Mrs R (Executor)
Scheme	Sippchoice Bespoke SIPP - Estate of Mr Y
Respondents	Sippchoice Limited (Sippchoice)

Outcome

1. I do not uphold the Executor's complaint and no further action is required by Sippchoice Limited
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. This complaint was originally brought by Mr Y and Mrs R has agreed to continue the complaint following his untimely death. Mr Y complained that Sippchoice did not carry out sufficient due diligence at the time that he made an investment with Imperium Enterprises Limited (**Imperium**). He wished to recover the losses he made and avoid a tax bill for an unauthorised payment. Mr Y also considered that there was a potential conflict of interest in employees from Sippchoice being appointed as directors of Imperium.

Background information, including submissions from the parties

4. Mr Y completed an application form for the Sippchoice Bespoke SIPP (**the SIPP**) in December 2010. Mr Y also applied at the same time to transfer approximately £114,000 into the SIPP from various other pension arrangements and to purchase shares in Imperium. As Imperium was an unquoted company Mr Y also completed a Supplementary Questionnaire which included the following note:

"It should be noted that investments in unquoted companies can be illiquid and have a very limited market and, therefore, they may take some time to sell. This can create serious problems if the sales proceeds are to provide benefits, particularly death benefits. You should, therefore, have regard to this before deciding to proceed and we strongly recommend that you also seek legal and financial advice before proceeding."

5. When Mr Y completed the application form he was asked to complete and sign the following section:

“I have noted the extract below from the Sippchoice Bespoke SIPP Terms and Conditions and hereby request Sippchoice Limited to proceed with the new investment...

Extract from Section 5 of the SIPPchoice Bespoke SIPP Terms and Conditions

- e. We will not be liable for the consequences of any decisions that you, the Investment Manager or your Agent make relating to the purchase, retention, dealing with or sale of any investments in Your Fund.
- f. If you the Investment Manager or your Agent request us to make an investment, or to make available funds from Your Fund to make an investment, then we will be entitled to assume that:
 - (i) you are fully aware of the nature of the investment, any obligations attaching to it and its liquidity;
 - (ii) you fully understand the risks attaching to the investment; and
 - (iii) you have taken such professional advice in relation to the investment as you consider appropriate in the circumstances;

and we will not be responsible in any way for the performance or liquidity of the investment, or for any tax consequences arising from the investment or for any loss relating to the period between the date that the investment request is received and the date that it is completed, irrespective of the closing date of the investment.”

6. Following receipt of the application form and Supplementary Questionnaire Sippchoice proceeded to purchase shares in Imperium in March 2011.
7. On 27 September 2013 Sippchoice wrote to Mr Y to inform him that it had received a tax assessment in respect of the SIPP and the investment in Imperium. HMRC had found the investment in Imperium to be a pension liberation scheme whereby investors were allowed to receive around 25% of the value of their investment as a loan from SKW Investments Limited (**SKW**) before the minimum pension age of 55. HMRC had decided that the loans from SKW were unauthorised member payments and liable for income tax.
8. The letter further explained that Sippchoice had also received a tax assessment for a scheme sanction charge as administrators of the SIPP. Sippchoice intended to appeal the scheme sanction charge but this could take some years. Furthermore, under the SIPP’s terms and conditions any tax liabilities and associated costs that arose would be paid from the SIPP’s assets.

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9. On 25 February 2015 Sippchoice wrote to Mr Y to inform him of the results of its appeal against the scheme sanction charge. Sippchoice was not a party to the loan from SKW and had no knowledge of this at the time that the loan was made. HMRC had agreed to waive the scheme sanction charge for all transfers to the Sippchoice Bespoke SIPP before 22 December 2010 but not after this date. Sippchoice was appealing the decision to leave the scheme sanction charge in place for transfers after 22 December 2010 to the Tax Tribunal.
10. The letter also explained that there were some issues concerning the redemption of Imperium shares. As Sippchoice collectively held the majority of shares in Imperium through its Bespoke SIPP it had exercised its voting rights to appoint directors to the Board of the company. This action had been taken to protect the security of the underlying assets and to explore ways of creating sufficient liquidity. Sippchoice had also appointed accountants to carry out an independent business review of Imperium.
11. Sippchoice provided further updates to Mr Y on the investment in Imperium in June, August and December 2015. The updates explained the further actions that were being taken including investigating the values placed on the underlying investments in properties. The December 2015 update also advised Mr Y that the net asset value of Imperium was lower than that shown in the last balance sheet at 31 March 2014 and equated to around 36p per share. Sippchoice was also investigating appointing a liquidator to wind up the company.
12. Sippchoice issued a further update on 26 February 2016 and reported that unexpected liquidity problems had been found within Imperium and that there was little likelihood of the position improving in the foreseeable future. An offer had been received from a prospective purchaser and it was its initial view that it would be beneficial to proceed with a sale of all of its SIPP members' shares.
13. On 11 July 2016 Sippchoice issued a further update and reported that the Judge had found in its favour in respect of the appeal against the scheme sanction charge. HMRC had however eight weeks to appeal against the finding and it was awaiting HMRC's decision whether or not to appeal. The Board of Imperium had decided to liquidate the company's assets, following which the company would be liquidated under a member's voluntary liquidation.
14. Further updates were issued to Mr Y on 6, 14 and 28 September 2016. These updates reported that HMRC had decided to appeal the decision by the Tax Tribunal and that Imperium had been placed in administration due to the non repayment of a loan.
15. Further updates were issued by Sippchoice on 16 November 2016 and 16 January 2017. It reported that the Administrator had decided to sell the underlying properties and that he planned to make an initial payout to shareholders in February 2017, and a final payout as soon as possible thereafter.

16. On 20 March 2017 Mr Y raised a formal complaint with Sippchoice saying that he was facing a large tax bill with HMRC [in respect of the loan he had received from SKW] and asked why he had not been made aware of pension scamming when taking out the SIPP. Mr Y also asked to see what due diligence Sippchoice had undertaken when purchasing the Imperium shares and that there appeared to be a conflict of interest with directors of Sippchoice also being directors of Imperium.
17. Sippchoice responded to Mr Y on 19 April 2017 and explained that it had carried out identity checks with Companies House on Imperium and its directors. It had then decided to allow the investment in Imperium as:
 - a. the individuals at Imperium had a good understanding of HMRC rules and appeared to be professional in their dealings with Sippchoice;
 - b. the verification of identity checks was satisfactory;
 - c. the investment strategy described on Imperium's website seemed credible; and
 - d. there was no suggestion of any involvement in a pension liberation scheme.
18. Sippchoice also explained that at the time that Mr Y took out the SIPP, pension scamming was less prevalent than it has subsequently become and there was no regulatory requirement to send out warnings. Sippchoice were also not aware that Mr Y was receiving a loan in connection with his investment in Imperium. The background to its appointment as directors of Imperium was explained in its update letter of 26 February 2016. Sippchoice was aware that its appointment as directors of Imperium was unusual but considered it was the best way of trying to retrieve a bad situation, and it was satisfied that its involvement had prevented the outcome from being worse than it otherwise would have been. Sippchoice did not levy any charges for acting as directors of Imperium and it had borne significant professional fees in relation to its appointment.
19. Mr Y did not agree with the response from Sippchoice and after some further correspondence brought his complaint to this office. Mr Y also raised the issue that Sippchoice should have carried out a more thorough investigation when it became aware of the amount of business it had with Imperium. Sippchoice says in its formal response to this office that it is easy to assert, with the benefit of hindsight, that more should have been done. Sippchoice believes that the relevant question is whether the action it took was reasonable. The action that Sippchoice took was to raise detailed questions with Imperium and the Tax Tribunal decided that this action was reasonable in the circumstances.
20. Sippchoice say that Mr Y's SIPP has lost around 55% of the amount invested. The total amount to be received from the liquidation of Imperium is approximately 20% of the investment he made. Mr Y also received a loan from SKW of around 25% of the investment he made.

21. Sippchoice also say that Mr Y was financially knowledgeable and was a mortgage adviser and approved by the FCA from October 2004 to January 2007. He should have been aware that the loan from SKW being linked to an investment in Imperium from his pension fund was a questionable transaction, but he decided to proceed nevertheless. Mr Y never sought, and never received, any advice from Sippchoice. The cause of his financial loss was the poor performance of Imperium and for which he accepted full responsibility when he completed the application form and he confirmed he had noted the extract from the terms and conditions.

Adjudicator's Opinion

22. The Executor's complaint was considered by one of our Adjudicators who concluded that no further action was required by Sippchoice. The Adjudicator's findings are summarised below.
23. When Mr Y initially complained he was seeking to recover from Sippchoice the losses that he incurred as a result of the wind up of Imperium, and to avoid the tax charge that HMRC had levied for the unauthorised payment he received. But the decision to invest in Imperium was made by Mr Y alone and he acknowledged in his application that Sippchoice's terms and conditions made it clear that Sippchoice could not be held liable for the consequences of that decision or for any tax liability. The Adjudicator did not consider that there were any grounds to overturn that position or to make Sippchoice liable for Mr Y's losses or any tax liability.
24. It is not known how Mr Y came to hear of Imperium or why he chose Sippchoice as the provider for his SIPP, but the Adjudicator considered, on the balance of probabilities, he was influenced by the promise of a loan from SKW. Sippchoice has said that Mr Y was financially knowledgeable and that he should have known that a loan being linked to a pension investment was a questionable transaction. Mr Y had acted as a mortgage adviser and it is probable that he had some pension knowledge including the fact that pension benefits could not in 2010 be accessed until age 55. He should therefore have either sought financial advice or researched the matter further before deciding to proceed with the investment in Imperium.
25. Mr Y also asked the question as to why Sippchoice did not provide any scam warnings when he took out the SIPP. Sippchoice has said that it was not a regulatory requirement at the time which is true and that pensions liberation was far less prevalent than it is now. The regulatory requirement for pension providers to look more thoroughly at possible investments and issue warnings on pension liberation and scams did not come into force until February 2013. Prior to this date the regulatory requirements were less strenuous and pension providers had to simply verify the identity of the investment and decide if it were a permitted investment. The checks carried out by Sippchoice at the time of Mr Y's application were, in the Adjudicator's opinion, reasonable.

26. Mr Y has also questioned the fact that Sippchoice acted as directors of Imperium. The Adjudicator reviewed the various notices that Sippchoice issued in relation to its decision to act as directors of Imperium, and this only occurred after it became aware of the problems there and the issue of the tax assessments. It does appear that the appointments were made to protect the interests of all its SIPP's members. The Adjudicator did not consider that this action was unreasonable and it may well be that this action helped secure some of Mr Y's remaining investment.
27. The Executor did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs R has not raised any material objections to the Opinion or provided any new information. Her main concern is that she believes Mr Y would not have raised the complaint unless he thought there were valid grounds for complaint and she is seeking reassurance that the opinion reached has been reviewed by an Ombudsman. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mrs R for completeness.

Ombudsman's decision

28. I can understand Mrs R's concern as executor that she has fully followed up on any complaints that Mr Y has raised which may lead to additional monies being due to the Estate. However, I can reassure Mrs R that the complaint has been thoroughly investigated and I have reviewed the decision reached by the Adjudicator.
29. On looking at the sequence of events and all the information provided I find that the decision reached by the Adjudicator is the correct one. The decision to invest in Imperium was made by Mr Y alone and the documentation he completed made it clear that Sippchoice could not be held liable for that decision or for any tax liability that may be incurred.
30. Therefore, I do not uphold Mr Y's and the Executor's complaint.

Anthony Arter

Pensions Ombudsman
29 June 2018