

Alert

Advising on pension transfers with a view to investing pension monies into unregulated products through a SIPP

It has been brought to the FSA's attention that some financial advisers are giving advice to customers on pension transfers or pension switches without assessing the advantages and disadvantages of investments proposed to be held within the new pension. In particular, we have seen financial advisers moving customers' retirement savings to self-invested personal pensions (SIPPs) that invest wholly or primarily in high risk, often highly illiquid unregulated investments (some which may be in Unregulated Collective Investment Schemes). Examples of these unregulated investments are diamonds, overseas property developments, store pods, forestry and film schemes, among other non-mainstream propositions.

The cases we have seen tend to operate under a similar advice model. An introducer will pass customer details to an unregulated firm, which markets an unregulated investment (e.g. an overseas property development). When the customer expresses an interest in the unregulated investment, the customer is introduced to a regulated financial adviser to provide advice on a SIPP capable of holding the unregulated investment. The financial adviser does not give advice on the unregulated investment, and says it is only providing advice on a SIPP capable of holding the unregulated investment. Sometimes the regulated financial adviser also assists the customer to unlock monies held in other investments (e.g. other pension arrangements) so that the customer is able to invest in the unregulated investment.

The FSA is investigating a number of firms and has secured a variation of their Part IV permission so that they are unable to continue operating in this way. The FSA is also considering taking enforcement action against these firms.

We have seen cases where, as a result of these advisory strategies involving unauthorised firms, customers have transferred out of more traditional pension schemes and invested their retirement savings wholly in unregulated assets via SIPPs, taking on very high and often entirely unsuitable levels of risk despite receiving advice on the pension transfer from regulated firms.

Depending on the circumstances, the customer may not be able to have recourse to the Financial Ombudsman Service or Financial Services Compensation Scheme should there be a problem with the unregulated investment.

Financial advisers using this advice model are under the mistaken impression that this process means they do not have to consider the unregulated investment as part of their

advice to invest in the SIPP and that they only need to consider the suitability of the SIPP in the abstract. This is incorrect.

The FSA's view is that the provision of suitable advice generally requires consideration of the other investments held by the customer or, when advice is given on a product which is a vehicle for investment in other products (such as SIPP and other wrappers), consideration of the suitability of the overall proposition, that is, the wrapper and the expected underlying investments in unregulated schemes. It should be particularly clear to financial advisers that, where a customer seeks advice on a pension transfer in implementing a wider investment strategy, the advice on the pension transfer must take account of the overall investment strategy the customer is contemplating.

For example, where a financial adviser recommends a SIPP knowing that the customer will transfer out of a current pension arrangement to release funds to invest in an overseas property investment under a SIPP, then the suitability of the overseas property investment must form part of the advice about whether the customer should transfer into the SIPP. If, taking into account the individual circumstances of the customer, the original pension product, including its underlying holdings, is more suitable for the customer, then the SIPP is not suitable.

This is because if you give regulated advice and the recommendation will enable investment in unregulated items you cannot separate out the unregulated elements from the regulated elements.

There are clear requirements under the FSA Principles and Conduct of Business rules and also in established case law for any adviser, in the giving of advice, to first take time to familiarise themselves with the wider investment and financial circumstances. Unless the adviser has done so, they will not be in a position to make recommendations on new products.

The FSA asks regulated firms, in particular financial advisers and SIPP Operators to report to the FSA firms that are carrying on these activities in breach of the FSA requirements. You can do this by contacting our Customer Contact Centre on 0845 606 9966.