Summary
• As mis-sold PPI claims draw to a close, claims management companies are turning their attention to mis-sold pensions transfers.
• SIPP providers, financial advisers and DB trustees are most at risk of litigation.
• The number of mis-sold pension claims increasing is expected to be costly for the pensions industry, in terms of time, money and reputation.

Have you been mis-sold a pension?

Following a rise in complaints about inappropriate pension transfer advice, claims management companies may now look to replace their 'mis-sold PPI' revenue with that of 'mis-sold pensions'

"Have you been mis-sold PPI?" This phrase, shouted out through adverts, calls, emails and texts, was once so ubiquitous that it conditioned for many a Pavlovian-style visceral reaction of annoyance. But thankfully for blood pressure levels, these words have been ringing out less and less as the cold-calling ban comes into effect and the deadline date for PPI claims, 29 August 2019, creeps ever closer.

However, claims management firms will be looking to replace the income generated from PPI claims. And they're looking in the direction of the pensions industry.

Dalriada Trustees senior trustee representative Hugh Nolan notes that while the mis-sold claims currently seem to focus around Self-Invested Personal pensions (SIPPs), they may in time also cover DB to DC transfers and drawdown advice.

"The claim will be that the consumer has lost out as a result of the advice given, which may simply be because it didn't work out as well as they had hoped or that their previous scheme would have been better with the benefit of hindsight," he adds.

Also looking back was the FCA, which in its 2017 *Update on DB transfers* noted that since October 2015, of the 88 DB transfers it looked at, where the recommendation was to transfer out, only 47 per cent were found to be suitable.

The Pensions Scams Industry Group (PSIG) also found in January 2019 that, of the 27,000 transfers it researched, one in 20 were 'dodgy'.

Increases expected

So there is potentially plenty for claims management companies to work with. And working they are.

"There is no doubt that claims management companies are looking for a new revenue stream to replace PPI claims. The amount of money in pension schemes makes our industry potentially attractive if they can find a way to earn money from any mistakes. I fully expect the volume of these claims to rise in future," Nolan predicts.

The Financial Ombudsman Service agrees, expecting 14,400 investment and pension complaints during 2018/19 – a 15 per cent increase on the 12,362 received the previous year.

The Financial Services Compensation Scheme (FSCS) also states that pension claims will be the majority of its compensation costs on 2018/19, with the bulk of these claims arising from bad advice to transfer retirement savings out of occupational schemes and into SIPPs. It expects the number of these claims to reach 8,200 in 2019, compared to 7,800 last year. In April, FSCS' protection limit rose to £85,000 for these claims.

Pensions 'mis-selling' claims are incredibly varied, Eversheds senior associate Dan Jackson points out, with claims ranging from c.£20,000 into the hundreds of thousands. "However, the majority of claims tend to be in the region of £40,000 to £70,000."

A quick Google search shows these high figures are used by claims management companies' websites to tempt people. They highlight case studies of people receiving many thousands of pounds for 'mis-sold pensions'. They stress that claims can be resolved 'hassle free' in mere weeks. Feedback comments call fees in the range of 50 per cent 'reasonable' (despite the Money Advice Service's website stating that the same help can be achieved for free through the ombudsman service, with the same likelihood of winning).

When websites aren't enough, phone calls are also used to drum up business.

For instance, Better Retirement financial adviser William Burrows received one such cold call last year, with the caller suggesting that transferring into a SIPP was 'high risk' and therefore may be entitled to compensation.

The Personal Finance Society chief executive Keith Richards points out that most claims management firms provide an invaluable consumer service and will even deter consumers from pursuing a claim when inappropriate.

"However, there are some unscrupulous behaviours and poor practice, with evidence of the cowboy ambulance chasers already trying hard to stir up claims and revenue opportunities."

If mis-sold pension claims are successful, the cost could run to billions, PSIG chair Margaret Snowdon warns. But their winning the case is certainly not guaranteed. As she says, the pension may not have been mis-sold.

"It is the job of the claims management firms to claim that the transfer was not properly processed in order to win compensation. If a few are successful, there will be a flood of others," she states.

At risk

At most risk of these claims seems to be financial advisers, Nolan states, "who need to make sure they are competent, follow proper processes and give (and robustly document) suitable advice".

SIPP providers are also facing particular focus, mainly due to the inherent flexibility offered by a SIPP, and the wider scope of underlying investments that can be made via a SIPP, Jackson says.

Trustees are also in the firing line. The case of Mr N, where the Pensions Ombudsman found that his pensions trustees did not carry out sufficient due diligence before making a transfer to a scam, "has led to a rise in opportunistic claims by members, represented by claims management firms, who see the possibility that a case could be made for compensation for possible detriment from the transfer", Snowdon explains.

Preventing unsuitable transfers may be difficult for the trustees of ceding schemes, Eversheds partner and head of pensions disputes Claire Carroll warns, as, in many cases, the member will have a statutory right to transfer. "In those circumstances, the key is to ensure there is a clear paper trail to evidence any warnings given about the risks of transferring to the new scheme."

For any pension scheme that is facing accusations of a mis-sold pension, Snowdon recommends asking the members to use the scheme's internal disputes resolution procedure. The scheme should also seek legal advice before getting drawn into exchanges directly with the claims firm, she adds.

Impact

Snowdon reckons that these claims are unlikely to be successful, "but they could tie up schemes in costly arguments for many months", she says.

To avoid this, "as we have seen with whiplash claims in car insurance, schemes can be tempted to offer settlements rather than incur the costs of defending the complaint, even if they fully expect that they'd eventually win", Nolan states.

He adds that "meritless claims will lead to extra costs for schemes, with formal complaints procedures costing schemes substantial amounts to fight at little or no cost to frivolous litigants".

Some claims may cost members financially though, if the firms charge a fee up front for trying, Snowdon warns.

These claims will not just affect the specific schemes targeted, but will also change the nature of the pensions industry generally, Carroll predicts. "All that remains to be seen is the extent of these changes and the industry's response."

Nolan is in no doubt that the reputation of the pensions industry will be damaged by these claims and the negative press they will generate about pension schemes. "The worst thing is that a handful of bad cases could dissuade thousands of people from making the proper savings they'll need once they retire," he warns.

So how worried should trustees, SIPP providers and advisers be of 'mis-sold pensions' being the new 'mis-sold PPI'?

The risk of PPI-style fraudulent mis-sold pension claims is reduced now that claims management companies are coming under the supervision of the FCA, "creating a level playing field and mitigating the poor practice so evident over recent years with fraudulent PPI claims", Richards says.

Yet, "pensions mis-selling claims are no doubt a real focus for claims management companies and claimant law firms. These companies are gathering groups of potential claimants and bringing complaints and claims on a volume, template-driven basis", Jackson says.

However, he states it is difficult to see the level of pensions mis-selling claims ever coming close to the level of PPI claims. "Quite simply, these types of claims are not anywhere near as ubiquitous as PPI."

Pensions mis-selling may not have the scope of PPI claims, but even at a fraction of the size it is still large enough to be turning the heads of claims management companies.

So while they may not reach the voluminous levels of PPI claims, it still seems best to prepare to be bombarded with the cry: "Have you been mis-sold a pension?"

Written by Laura Blows