DRN-3071489

The complaint

Mr M has complained that Pi Financial Ltd (trading as Money Foundations) gave him negligent advice to switch his personal pensions to a Self-Invested Personal Pension (SIPP). The advice facilitated investment into a high-risk, unregulated product - the Optima Worldwide Group (OWG) bond**.**

What happened

Several firms will be mentioned in this decision. These are:

Legal Partnership (LP) - unregulated introducer
Pi Financial Ltd, trading as Money Foundations (Pi) - regulated financial adviser
Strand Capital Limited (Strand) – stockbroker
James Hay (JH) - SIPP provider

Mr M says he met an individual (EE) at a networking event after he had been made redundant. They talked about pensions and EE said Mr M could get a higher return elsewhere and he promoted the type of investments he was dealing with.

Pi's adviser did provide a formal statement in response to the complaint on a complaints investigation form which confirmed that:

"I was contacted by an introducer (EE) who was part or associated with The Legal Partnership with whom I had an introducer agreement in place."

And in Pi's final response letter to Mr M's complaint, they confirmed Mr M had been referred by EE (an unregulated introducer) of the Legal Partnership.

Pi now say it was a different introducer and they were regulated. However, they have not provided evidence to substantiate this.

There's a letter from Mr M to Pi dated 31 January 2014 which said:

'I would like to transfer my existing pension with Aegon into a new Self Invested Personal Pension plan in order to allow me to access a wider range of investment. Could you please recommend a suitable SIPP provider for me and arrange the transfer accordingly.
Please note that I have a separate investment adviser who will be arranging investments to be held in the SIPP and therefore I do require any advice from you concerning this or the suitability of a SIPP platform.'

Pi's adviser replied by letter dated 3 February 2014 which said:

'Thank you for your letter of 31 January 2013 in which you instructed me to transfer your current Aegon pension plan into a new Self Invested Personal Pension (SIPP). I confirm I am happy to carry out your request and, as discussed, I will research the whole of market to find the most appropriate SIPP for your requirements….

I will have no input into the investment strategy for your SIPP funds, as you are using a separate investment adviser for this, and therefore I will only be responsible for arranging, and transferring your funds into the SIPP.'

In mid February 2014, various documents were completed and signed.

This included:

- a Client Agreement
- a SIPP application form
- a transfer analysis and a very rudimentary fact find which recorded some of Mr M's personal details
- a Knowledge and experience assessment which showed Mr M didn't really have any investment experience other than having a pension, a bank account and a saving plan all of which he had received advice on.

Pi recommended a SIPP with JH for Mr M and he transferred his pension worth around £31,600 into the SIPP. In March 2014, Pi instructed to transfer £30,000 of the funds to Strand and it was subsequently invested into OWG bonds.

Strand went into liquidation in 2017 and the OWG bonds have since been given a nil value by JH.

Mr M made a complaint to Pi in 2019 about the advice he received from them which they rejected. One of our investigators considered the complaint and recommended that it should be upheld. He didn't think the advice given to Mr M had been suitable and Pi should compensate Mr M for his losses.

Pi disagreed and so the complaint was passed to me for an ombudsman's decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Pi has submitted detailed submissions which I considered in full. I also considered their submissions on similar complaints. However, I'll focus in this decision on what I consider to be the key material issues in deciding the fair outcome of this complaint.
Pi's position in summary is that:

- Mr M instructed Pi to recommend an appropriate SIPP provider. They only provided Mr M with a limited advice service on these specific instructions. Given the limited nature of the retainer the firm took reasonable steps to ensure that its recommendation was suitable.
- Pi didn't provide Mr M with advice to switch his SIPP or on the investment in OWG. Mr M had already decided what he wanted to do before he approached Pi.
- The investment strategy for the SIPP was the responsibility of Strand who was also a regulated firm. They are responsible for Mr M's losses and not Pi who only played a very limited role here.
- Mr M was influenced by LP and likely would have moved to a SIPP and into OWG even if Pi had not recommended the SIPP.
- Pi's most recent position is that the introducer was acting for a regulated firm and so the complaint should be redirected to them.

relevant considerations

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

The FCA's Principles for Businesses (PRIN) apply to all authorised firms including Pi. Of particular relevance to this complaint is:

PRIN 2: '*A* firm *must conduct its business with due skill, care and diligence.'*
PRIN 6*: 'A firm must pay due regard to the interests of its customers and treat them fairly'*

PRIN 9: *'A firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment'.*

In addition, where regulated investment advice is given, the more detailed Conduct of Business Sourcebook (COBS) rules apply. Of particular relevance to this complaint are:

COBS 9 which applies where a firm makes a personal recommendation in relation to designated investment.

COBS 9.2.1(1): 'A firm must take reasonable steps to ensure that a personal recommendation, or a decision to trade, is suitable for its client'.

COBS 9.2.1 (2) says 'that when making a personal recommendation, a firm 'must obtain the necessary information regarding the client's:

(a) knowledge and experience in the investment field relevant to the specific type of designated investment or service;
(b) financial situation; and
(c) investment objectives;
so as to enable the firm to make the recommendation, or take the decision, which is suitable for him.'

COBS 9.2.2 provides:

'(1) A firm must obtain from the client such information as is necessary for the firm to understand the essential facts about him and have a reasonable basis for believing, giving due consideration to the nature and extent of the service provided, that the specific transaction to be recommended, or entered into in the course of managing:

(a) meets his investment objectives;
(b) is such that he is able financially to bear any related investment risks consistent with his investment objectives; and
(c) is such that he has the necessary experience and knowledge in order to understand the risks involved in the transaction or in the management of his portfolio.

(2) The information regarding the investment objectives of a client must include, where relevant, information on the length of time for which he wishes to hold the investment, his preferences regarding risk taking, his risk profile, and the purposes of the investment.

(3) The information regarding the financial situation of a client must include, where relevant, information on the source and extent of his regular income, his assets, including liquid assets, investments and real property, and his regular financial commitments.'

I am also mindful of the general legal position including: the law relating to causation, foreseeability and remoteness of losses.

My considerations here are:

- Did Pi give Mr M investment advice including a personal recommendation?
- If so, was the advice suitable?
- If the advice was unsuitable I need to consider whether:
    - Mr M would have relied on the advice or whether he would have acted the same way he did irrespective of Pi's advice and
    - If Mr M did rely on Pi's advice, how fair compensation should be calculated in the specific circumstances of this case.

advising on investments

I have firstly considered whether, based on the facts of the complaint, Pi provided Mr M with regulated investment advice.

Regulated activities specified for the purposes of section 22 of the Financial Services and Markets Act 2000 (FSMA) were set out in the Regulated Activities Order (RAO) and included:

'Advising on investments
***53.** Advising a person is a specified kind of activity if the advice is—*
(a) given to the person in his capacity as an investor or potential investor, or in his capacity as agent for an investor or a potential investor; and
(b) advice on the merits of his doing any of the following (whether as principal or agent)—
(i) buying, selling, subscribing for or underwriting a particular investment which is a security or a relevant investment, or
(ii) exercising any right conferred by such an investment to buy, sell, subscribe for or underwrite such an investment.'

Part III of the RAO listed the kinds of investment which are specified for the purposes of section 22 of FSMA. This included:

Article 82, 'Rights under a pension scheme' which at the time read.
(1) Rights under a stakeholder pension scheme.
(2) Rights under a personal pension scheme.'

As far as I can see Pi agrees that they recommended a particular SIPP with a particular SIPP provider to Mr M. This is also clearly evidenced in the recommendation letter where *advice* and *recommendation* are mentioned throughout. It also said Pi had recommended to surrender/discontinue the contracts outlined in the replacement form (which was Mr m's personal pension).

I'm satisfied that recommending a suitable SIPP provider can be considered to be 'advising' under Article 53 RAO. Pi were giving regulated advice on investments and provided a personal recommendation to Mr M when they advised on the SIPP. Therefore the obligations in COBS 9 were engaged.

was PI entitled to rely on their 'limited retainer'?

Pi has said they provided a limited advice service in accordance with Mr M's instructions. Mr

R had specifically asked for them to recommend a SIPP product and he told them he didn't require investment advice. Pi says they didn't provide advice on the switch to the SIPP or where it would be invested.

The issue to determine is whether Pi was entitled to restrict their advice to the recommendation of the SIPP product only. Having considered this carefully I don't think it was fair and reasonable for them to do so.

The purpose of Pi's regulatory duties under FSMA (and COBS) is to provide consumer protection taking into account the differing risks involved in different kinds of investments, the differing degrees of experience and expertise consumers have and the needs consumers may have for the timely provision of information and advice that is accurate and fit for purpose (Section 1B FSMA).

When recommending the SIPP, Pi needed to have a reasonable basis for believing that their recommendation would meet Mr M's objectives and that he was able to bear *any related investment risks.* I consider the risks of Mr M transferring his existing pensions and the risks of his intended investment through the SIPP with these monies were related to the establishment of the SIPP itself.

Applying COBS 9.2.2, I'm satisfied Pi couldn't simply ignore the context of why Mr M wanted a recommendation for a SIPP and what Mr M was intending to do once the SIPP was established. I consider that in order to advise on the merits of setting up a specific SIPP product, Pi needed to have regard to Mr M's wider circumstances including how his funds were currently invested and what the intended investment strategy would be. Assessing the suitability of a SIPP in isolation without considering the whole transaction is not reasonably possible.

During the investigation of this complaint Pi's adviser provided his testimony. He said he did due diligence on Strand once he knew where investments would be placed. There's no evidence in this particular case whether Pi knew Mr M was intending to invest in OWG specifically, however even if they didn't, in order to give suitable advice they needed to ask for this information.

The FSA published an alert in 2013 when they became concerned that regulated financial advisers were misinterpreting the rules. The alert focussed on unregulated investments which were introduced by unregulated introducers as these held particular risks for customers. The alert said:

'It has been brought to the FSA's attention that some financial advisers are giving advice to customers on pension transfers ***or pension switches*** *[my emphasis] without assessing the advantages and disadvantages of investments proposed to be held within the new pension..'*
'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 SIPPs and other wrappers), consideration of the suitability of the overall proposition, that is, the wrapper and the expected underlying investments in unregulated schemes.'

'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.'

'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'

And it specifically referred to cases where advisers were under the false impression they could advise on the suitability of a SIPP in the abstract. In 2014 the FSA issued a further alert in which they reiterated [emphasis added]:

'*Where a financial adviser recommends a SIPP* ***knowing*** *that the customer will transfer or switch from a current pension arrangement to release funds to invest through a SIPP, then the suitability of the underlying investment must form part of the advice given to the customer.* ***If the underlying investment is not suitable for the customer, then the overall advice is not suitable****.'*

*'The initial alert outlined our view that where advice is given on a product (such as a SIPP) which is intended as a wrapper or vehicle for investment in other products, provision of suitable advice generally requires consideration of the overall transaction, that is, the vehicle or wrapper and the expected underlying investments (****whether or not such investments are regulated products)****.*

Despite the initial alert, some firms continue to operate a model where they ***purportedly restrict their advice to the merits of the SIPP wrapper****.* '

Pi says the alert was to provide guidance where there was an '*advice gap'* and the adviser was the only regulated party in the transaction. And this wasn't the case here. Pi says Strand would have given Mr M advice on his investments. However, Mr M opened an account with *Strand* on an execution-only basis and I can't see any evidence that they were intending to provide Mr M with investment advice.

They also said LP had regulated advisers and it was one of them who advised Mr M. However, both Mr M and Pi's adviser in his testimony said it was EE who introduced Mr M and not the individual Pi now says was involved. And the adviser said it had been an unregulated introducer. So I think based on the evidence provided I think it's more likely than not it was an unregulated party.

In any event, I think applying a narrow reading of the alert to only specific circumstances is misguided. The essence of the alert, in my view, was to remind advisers that they couldn't just advise on a SIPP in isolation, but that to comply with their regulatory obligations they needed to consider the consumer's wider circumstances and whether what they were intending to do was suitable and in their best interest. I want to be clear that I consider Pi's obligations in this regard stem from COBS 9 and the Principles. The alert just provides clarification and sets out expectations from the regulator and good industry practice. The requirements of COBS 9.2.2 don't fall away even if another regulated party is involved. It follows that in order to give suitable advice on the SIPP, Pi needed to consider Mr M's wider circumstances and the suitability of the whole transaction, i.e. the switch between SIPPs, the suitability of a particular SIPP product and provider and the underlying investment strategy.

I also point to COBS 2.1.2R which sets out clearly that a firm must not seek to exclude or restrict; or rely on any exclusion or restriction of any duty or liability it may have to the client under the regulatory system. So Pi couldn't limit their obligation in COBS 9 by taking instructions from Mr M to only advise on the SIPP wrapper in isolation.

Pi and Mr M were in an advisory relationship where Pi was the expert and they had a duty to meet their regulatory obligations. As explained above COBS 9 required Pi to consider the wider suitability of Mr M's intended transactions when recommending a SIPP - whether he requested this or not. They failed to do this and therefore I consider they did not act fairly or reasonably when providing their advice to Mr M.

Pi Financial referred to the court case Denning v Greenhalgh Financial Services which it said considered the scope of duty of advisers. And the High Court decision - Adams v Carey Pension UK LLP, where it noted the court had considered the duty of a party performing a limited service and said the decision was relevant to Mr M's case.

With respect to the *Adams v Carey Pension UK LLP* High Court decision, that case was about an execution-only contract. The parties were a SIPP administrator and an investor. It was clear on the facts of the case that the SIPP administrator didn't act in an advisory role and it told the investor to seek independent advice elsewhere. The judge held that COBS 2.1.1 would have to therefore be construed in light of the nature of the contractual relationship which was not advisory. I think the circumstances in this complaint are significantly different. Pi didn't act on an execution-only basis. They were giving advice on the SIPP, so the regulatory obligations of COBS 9 did apply. And as explained above part of the suitability assessment of the SIPP would have included the suitability of the pension switch and the underlying investment strategy.

I have also considered *Denning v Greenhalgh*, but it doesn't change my findings either. For the reasons I have explained, I'm satisfied that Pi gave regulated advice on the suitability of the particular SIPP. They had to comply with their regulatory obligations under COBS 9 and, in that sense, I don't think *Denning* is of value to that determination.

In summary, I consider that when advising Mr M on the suitability of the James Hay SIPP, Pi had to consider the suitability of the whole intended transaction including the pension switch and where Mr M intended to invest after the transfer.

did Pi provide suitable advice?

COBS 9 required Pi to take reasonable steps to provide Mr M with a suitable recommendation, so I considered whether they met this requirement.

Mr M was 49, self-employed and was earning £30,000 per year. He had a mortgage of £55,000 and savings worth £10,000. He had no significant investment experience.

The OWG bond was invested in loan notes which are considered relatively high-risk and are not regulated. The bond prospectus (which Pi has provided to us on another complaint) confirms this:

'The Convertible Redeemable Loan Note is an unregulated investment and the protections normally afforded by the Financial Services and Markets Act 2000 do not apply. Investors will not be entitled to compensation under the Financial Services Compensation Scheme.'

I think it's evident from the documents Mr M completed that he didn't have the necessary experience and knowledge to understand the risks of this non-standard investment which included illiquidity risks, lack of diversification and potential loss of his retirement funds. Pi have also confirmed to this service previously that they consider the OWG bond to be unsuitable for retail investors, so I don't think it's really in dispute that Mr M's intended investment was unsuitable for him.

Given Mr M's lack of investment experience, I'm also not persuaded he was a credible self-investor. I can't see any persuasive reasons why Mr M needed to change his pension to a SIPP with more investment options.

Pi knew - or ought to have known - that the intended investment into OWG was too high risk and unsuitable for an inexperienced investor in Mr M's circumstances. Despite this, they recommended a SIPP to facilitate this investment.

In summary, I think Pi should not have recommended a SIPP to Mr M. They should have explained that his intended investment was too high risk and that given this was a significant proportion of his retirement provisions, he couldn't financially bear the risks with his retirement funds.

In my view, Pi were in breach of the Principles and COBS when they recommended the SIPP which facilitated an investment which was clearly not suitable for him. They didn't pay due regard to Mr M's interests and did not take reasonable steps to ensure that their personal recommendation was suitable for Mr M as per their regulatory obligations. Therefore I do not consider that Pi's actions in their dealings with Mr M were fair or reasonable in the circumstances.

would Mr M have transferred his pension to a SIPP and invested in OWG anyway?

I considered whether Mr M would have proceeded with the transaction regardless of what Pi told him. The OWG brochure detailed some of the risks of the investment and if I assume that Mr M was given this brochure - which is something I don't know - he might have been informed that this was unregulated and high risk. I also considered that LP might have influenced Mr M in the background and could have persuaded him to proceed.

However, on balance, I think explicit advice from Pi acting as a professional firm recommending him not to proceed would have carried significantly more weight than any general wording in application forms or brochures warning the investment was high risk. Mr R had no real investment experience so I'm not convinced he would have been able to properly understand the risks he was taking with his entire pension here.

The consequences of the loss of the pension were of great significance to Mr M's overall financial position. He didn't have the capacity to bear significant losses to his pension, which was a real possibility with the investment in the OWG bond. So I think on balance if Pi, as a regulated adviser and independent third party, had clearly explained they couldn't recommend the SIPP as the intended investments were not suitable for his circumstances, the transaction wasn't in his best interest and he couldn't afford to risk his pension in this way, I think he would have decided not to proceed.

Given that Pi should have been aware that there was risk Mr M was being influenced by LP and potentially not given full and clear information about what he was about to do, they should have established what he had been told and correct any potential misconceptions. I'm not persuaded the evidence suggests Mr M was so strongly motivated to make the transaction that he would have decided to press ahead with it against professional expert advice. I think if Pi had been given him clear information about how risky the OWG investment was and that he could lose a significant amount of money, he would have listened.

For the reasons I have given above, I'm satisfied that Mr M would have more likely than not followed Pi's advice if they had explained the position in full and recommended against the SIPP and investment with OWG as it was unsuitable for him. In his pension transfer analysis he ticked boxes to say he was happy with the performance and charges of

his existing plans and was happy they were kept with financially secure providers. So I think if Pi had recommended against the SIPP and the subsequent investment in OWG, Mr M likely would have remained invested where he was.

reliance on another regulated party: COBS 2.4.4

Pi also said COBS 2.4.4 should be considered. They say they were entitled to rely on Strand providing a suitable recommendation for Mr M.

The account Mr M had with Strand was execution-only. So they weren't intending to give Mr M any advice.

I also don't consider that COBS 2.4.4. applies here. The rule broadly says where a firm (F1) receives an instruction from another regulated firm (F2) to carry out a regulated activity on behalf of a client, F1 can rely on assessments or information provided to it by F2. Pi suggests in these particular circumstances they were F1 and Stand were F2. However, Pi didn't receive any instructions here from these parties.

There was no need for Pi to assess the investment in encompassing detail. But they needed to have sufficient understanding of what Mr M would be invested in. If they had done so, they would have known his intended investment in OWG was high risk and unsuitable for him.

So in any event, even if COBS 2.4.4. applied, I can't see how Pi could reasonably rely on Strand (or any other third party) providing Mr M with a suitable investment, when they knew or ought to have known he was about to invest into an unsuitable product.

fair compensation

I have found that Pi gave Mr M unsuitable advice and if it wasn't for their advice, Mr M more likely than not would have not transferred his pensions to a SIPP and subsequently not into the OWG bonds. Having considered all the evidence and arguments, I consider it fair that Pi compensates Mr M for any losses he suffered by transferring into the JH SIPP and investing into OWG.

Pi says it can't be required to pay compensation which is outside of its legal scope of responsibility and which is too remote to be recoverable as a matter of law. It referred to SAAMCO v York Montague Ltd [1997] and BPE Solicitors v Hughes-Holland [2018].
Pi's scope of duty was to take reasonable steps to give a suitable recommendation. This included understanding Mr M's knowledge and experience, objectives and financial situation. Part of this duty was the consideration of the pension switch and the underlying investment in the SIPP as explained above.

Pi breached their regulatory duties when they recommended a SIPP although the intended investment was evidently unsuitable for Mr M. For the reasons I have given earlier in the decision, I think Mr M wouldn't have been in the JH SIPP or OWG bond investment at all if Pi had met its obligations under COBS and PRIN. And consequently he wouldn't have suffered the investment losses he did. I therefore consider the losses Mr M suffered from the high-risk investment are related to Pi's unsuitable advice.

As I said above I think it's more likely than not LP's introducer was unregulated. But even if Mr M received advice on the OWG bond from a regulated individual at LP, I can only consider the complaint in front of me which is against Pi. And as explained above, Pi could have prevented Mr M's losses by giving him suitable advice. So I think it's fair they compensate him for his losses in full. If Pi considers that another party's actions have

contributed to these losses, they are free to pursue this directly with them after having compensated Mr M in full.

OWG might distribute funds to customers at some point, however it's unclear if and when this will happen. So in the circumstances I think it's fair for Pi to compensate Mr M now. I've included ways to ensure Mr M is not overcompensated in the redress below.

putting things right

In awarding fair compensation for Mr M's losses my aim is to put him as close as possible into the position he would probably now be in if he had been given suitable advice by Pi.

In my view, for the reasons given above, Mr M would more likely than not have stayed in his existing arrangements if Pi had followed their regulatory duties and not recommended the SIPP.

Pi should request a notional value from Mr M's previous pension provider. Pi should calculate compensation by comparing the value that Mr M's pensions would have been at the date of my final decision (Value A) with the value of his SIPP (Value B) on the same date.

If Value A is higher than B, then the difference between A and B is the loss.

I consider the notional value outlined above is the fairest way of resolving this complaint. However if the previous pension provider isn't able to calculate a notional value, Value A should be calculated by applying the following benchmark to the transfer value: FTSE UK Private Investors Income Total Return Index.

When calculating Value A, any additional sum paid into the SIPP should be added to the calculations from the point in time when they were paid in.

Any withdrawal, income or other distribution out of the SIPP should be deducted from the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there are a large number of regular payments, to keep calculations simpler, I'll accept if they are totalled and all those payments deducted at the end instead of deducting periodically. Any additional sum paid into the SIPP should be added to the Value A calculation from the point in time when it was actually paid in.

Mr M received a compensation payment into his SIPP from the Financial Services Compensation Scheme (FSCS) after the liquidation of Strand. This would have been to account for a remaining cash amount which was held by them. This payment will be included in the actual value, so no further adjustment is needed to account for this.

I understand Mr M's OWG investment is illiquid, meaning it can't be readily sold on the open market. This means it can be complicated to establish Value B. So, Value B should be assumed to be nil to arrive at fair compensation. Pi should take ownership of the illiquid investment by paying a commercial value acceptable to the pension provider. This amount should be deducted from the compensation and the balance paid as I set out above.

If Pi is unable to purchase the investment the actual value should be assumed to be nil for the purpose of calculation. Pi Financial may require that Mr M provides an undertaking to pay Pi any amount he may receive from the investment in the future. That undertaking must allow for any tax and charges that would be incurred on drawing the receipt from the pension plan. Pi will need to meet any costs in drawing up the undertaking.

The SIPP only exists because of the illiquid investment. In order for the SIPP to be closed and further SIPP fees to be prevented, the investment needs to be removed from the SIPP. I've set out above how this might be achieved by Pi taking over the investment, or this is something that Mr M can discuss with JH directly. But I don't know how long that will take. Third parties are involved and we don't have the power to tell them what to do. To provide certainty to all parties, I think it's fair that Pi pay Mr M an upfront lump sum equivalent to five years' worth of SIPP fees (calculated using the previous year's fees). This should provide a reasonable period for the parties to arrange for the SIPP to be closed.

The compensation amount should if possible be paid into Mr M's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr M as a lump sum. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the compensation should be reduced to *notionally* allow for any income tax that would otherwise have been paid.

If Mr M hasn't yet taken any tax-free cash from his plan, 25% of the loss would be tax-free and 75% would have been taxed according to his likely income tax rate in retirement – presumed to be 20%. So making a notional reduction of 15% overall from the loss adequately reflects this.

In addition, Pi Financial Ltd should pay Mr M £300 for the distress Mr M suffered when he realised he had lost significant parts of his pension and he couldn't access it when he wanted to.

Pi Financial Ltd should pay interest at the rate of 8% simple per annum on the compensation calculated as at the date of decision if it's not paid to Mr M within 28 days of us notifying Pi Financial Ltd that Mr M has accepted my final decision.

Income tax may be payable on any interest paid. If Pi Financial considers it's required by HM Revenue & Customs to deduct income tax from the interest, it should tell Mr M how much it's taken off. It should also give Mr M a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Details of the calculations should be provided to Mr M in a clear and simple format.

My final decision

I uphold this complaint and require Pi Financial Ltd to pay compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 12 August 2022.

Nina Walter
Ombudsman