

## The complaint

Mr A complains that Compass Wealth Management Consultants Limited (Compass) gave him unsuitable advice. In particular he says it advised him to move his personal pension pot to a self-invested personal pension (SIPP) so he could invest £20,000 of his pension pot in a high-risk, illiquid investment.

Mr A is represented in this matter by a third party.

## What happened

I understand that in late 2009, Mr A discussed his pension arrangements with Compass.

Fact find information recorded at the time set out that Mr A was 50 years old, had no dependents and wanted to retire at age 65. It appears that Mr A had some deposit-based savings and was earning £23,000 per year. Mr A also held a mortgage endowment policy and a personal pension plan that both he and his employer were contributing to. His attitude to investment risk was recorded as *'balanced for retirement planning'*.

Compass advised Mr A to transfer his pension pot to a SIPP as he apparently wanted to invest in a 'timber fund' with some of his pension savings. It noted that his current personal pension did not permit *'partial transfers'*.

Mr A transferred his personal pension pot to the SIPP recommended by Compass in early 2010. He invested £20,945 in a timber investment; the 'Princess Project' run by a company called Silva Tree. Compass advised Mr A to invest a further £47,500 in a *'balanced portfolio strategy'* managed on a discretionary basis by a third-party investment manager.

It appears Mr A was charged an 'establishment charge' of £425, plus VAT for the SIPP and an annual management charge of £600, plus VAT. In addition, an annual management charge of 1.35%, was taken from the discretionary managed portfolio held in the SIPP, of which Compass received 0.5% per year. In its suitability report Compass set out that this fee was to *'pay for ongoing advice'*.

Despite having received an annual fee for *'ongoing advice'* Compass has not been able to provide this service with up-to-date information on Mr A's SIPP investments. The investigator therefore requested copies of statements from Mr A's SIPP provider. These statements showed that the total value of Mr A's SIPP increased from around £68,600 in March 2012 to over £91,100 in February 2020.

In January 2021, Mr A's representative complained to Compass about the pension advice it have given Mr A in 2010. It said the risks involved in the investments Mr A held in his SIPP *'were not fully and clearly explained'* and it said he would not have gone ahead with the transfer to the SIPP if he had understood the risks involved.

Compass did not uphold Mr A's complaint. It said, in summary, that as Mr A wanted to *'...invest in a Timber Project, the only option available to him, was to transfer his existing*

*benefits from his [personal pension plan] to a SIPP which gave him a more flexible way to invest his existing pension fund.'*

It said it had explained the features and charges for the SIPP to Mr A and it said: *'... the higher risk of investing in such funds and the Timber project were clearly brought to Mr A's attention.'* It said Mr A could have chosen not to go ahead with its recommendation *'...if he was not entirely satisfied or had any doubts'.*

Mr A did not accept Compass' response and his representative referred the complaint to this service.

Our investigator said that, having carefully considered the information available, he thought Mr A's complaint should be upheld.

He noted that the advice Mr A had complained about was given over six years before he had brought his complaint. But he said he was of the view that Mr A had brought his complaint within three years of the date he ought reasonably to have become aware that he might have cause for complaint. As this was the case, he said he was satisfied that the complaint had been brought within the timescales this service must apply.

In order to put matters right he said Compass should put Mr A back in the position he would now be in, but for its unsuitable advice. He also said it should pay Mr A an additional £300 for the worry and upset this matter had caused him.

Compass did not accept our investigator's view. It made the following points on whether Mr A's complaint had been brought within the timescales this service must apply: *'...you have previously commented that 'I don't see that Mr A would've had cause for complaint prior to January 2018 about the advice he received'. You have concluded that you do not believe the client would have been aware more than three years ago that there was a problem with the investment. Compass are not certain that this is a fair conclusion and consequently, we would ask you to review this on the basis of the client's requirements at the time of the advice and subsequently with any ongoing documentation the client would have received from the Silva Tree investment.'*

It also commented on the merits of Mr A's complaint. It said, in summary, that Mr A: *'...had already decided upon the investment before he met with the adviser with a clear objective of investing in the Silva Tree Investment. The client was offered warnings about the high risk nature of the investment. In addition the only way to facilitate the client's requirements was by way of the SIPP, his existing pension could not accommodate investing in accordance with his requirements. The higher costs of the SIPP were clearly set out in the Suitability Report...*

### **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.

I must first consider whether this complaint has been brought within the timescales I am required to apply.

This service does not have the power to consider every complaint referred to us. In particular, the rules set by the industry regulator, the Financial Conduct Authority (the FCA), in the Dispute Resolution Sourcebook (DISP) say:

*The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service:*

*(2) more than:*

*(a) six years after the event complained of; or (if later)*

*(b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint;*

*unless the complainant referred the complaint to the respondent or to the Ombudsman within that period and has a written acknowledgement or some other record of the complaint having been received;*

Unless a business consents, or exceptional circumstances apply, we're unable to consider a complaint made outside these time limits.

It is not in dispute that this complaint was made more than six years after the advice was given. Mr A was advised to take out the SIPP in early 2010. A complaint about this advice was made in early 2021, around 11 years later.

I must therefore consider whether the complaint was brought within three years of the date Mr A knew, or ought reasonably to have known, that he might have cause for complaint.

Compass has asked this service to review '*...any ongoing documentation the client would have received from the Silva Tree investment.*' I understand this to mean that Compass feels Mr A may have received documentation about his Silva Tree investment, more than three years before he brought his complaint, that ought reasonably to have given him cause for complaint.

The only documentation this service has been provided with relating to Mr A's Silva Tree investment is a copy of a letter dated April 2013, regarding a change in the management company for the investment. No other documentation has been provided. In the absence of any documentation regarding Mr A's Silva Tree investment, I have considered whether the statements and valuations Mr A received from his SIPP provider, might have led him to think he had cause to complain about the advice he had received, more than three years before he brought his complaint.

For whatever reason Compass did not provide this service with information it had received from Mr A's SIPP provider, so our investigator contacted Mr A's SIPP provider directly for copies of his statements.

These statements showed that the total value of Mr A's SIPP increased from around £68,600 in March 2012, to over £80,300 in June 2016 and again to over £91,100 in February 2020. The SIPP statements do not provide a breakdown of the value of individual holdings in Mr A's SIPP. As this is the case, I don't think there is anything in these statements that would have led Mr A to think that he might have cause for complaint any sooner than he did. They showed his SIPP was steadily increasing in value with no suggestion that there might be a problem with any of the investments.

Before reaching a decision on whether Mr A's complaint had been brought within the timescales I must apply, I asked our investigator to contact Compass again to ask if it had any evidence to show that Mr A ought reasonably to have been aware that he might have cause for complaint about the advice it gave him, more than three years before his representative brought a complaint on his behalf.

Compass did not provide any documentation to this service and instead asked this service to provide it with copies of the statements our investigator had obtained from Mr A's SIPP provider. Having had the opportunity to review these statements it said:

*'...it is not clear how the Silva Tree investment value was incorporated in these statements if at all. If they had been included this seems somewhat dubious as the project failed some time ago, so how was any value put on it. Indeed The Hartley SIPP went into administration in July 2022. The Silva Tree project and similar investments are subject to FCA investigations, also involving The Financial Services Compensation Scheme (FSCS). Consequently, Compass maintain that any losses sustained should be referred to the FSCS'.*

It is not clear to me why Compass has not been able to provide this service with a copy of the information it used to review Mr A's investments, particularly as it appears it has been receiving an ongoing fee to provide Mr A with *'regular annual reviews of the equity investments'*. If Compass had concerns about the SIPP statements Mr A was receiving, from the SIPP provider it had recommended, I think it should have raised these concerns with the SIPP provider.

I do not see, however, how any concerns that Compass might belatedly have, about these SIPP statements supports its position that Mr A ought reasonably to have known more than three years before he brought his complaint, that he might have cause for complaint. As Compass has acknowledged, the statements do not provide a breakdown of the value of the investments held in Mr A's SIPP, so I don't think he could reasonably have been expected to know that there might be a problem with the Silva Tree investment from these statements. I also note that the statements do not provide any details of the ongoing charges that were being taken from Mr A's SIPP and the underlying investments.

In the absence of anything to show that Mr A ought reasonably to have known that there might be a problem with the investments in his SIPP, more than three years before he brought his complaint, my decision is that Mr A has brought his complaint within the timescales this service must apply.

I also do not see why Compass feels *'any losses sustained should be referred to the FSCS'*. As Compass is aware, the FSCS protects consumers when a financial business fails and cannot pay compensation. As Compass arranged the SIPP for Mr A, so that he could invest in the Silva Tree investment, it is responsible for paying any redress due to Mr A, not the FSCS.

#### *suitability*

As I have not seen anything that shows or suggests that Mr A has referred his complaint to this service too late, I have also considered the suitability of the advice Mr A received, as part of this decision.

Having carefully considered this matter my decision is that the advice Mr A received to transfer his personal pension pot to a SIPP was unsuitable. I'll explain why.

It is unclear how Mr A became aware of the Silva Tree investment. In the suitability report Compass said:

*You are keen to make your pension work hard for you and have identified a timber investment fund that you would like to invest £20,000 in from your pension.*

It went on to say that Mr A *'...would like advice on how to invest the remainder once the SIPP has been established'*.

Compass says that *'the only way to facilitate'* Mr A's wish to invest in the Silva Tree investment was *'by way of the SIPP'*. It also says that, Mr A *'was offered warnings about the high risk nature of the [Silva Tree] investment.'*

Compass was required to give suitable investment advice. I don't think it was fair or reasonable for it to arrange a SIPP for Mr A, without first considering whether his intention to invest in the Silva Tree investment was suitable for him, given what it knew about his personal and financial circumstances. If it felt the investment was not suitable, it should have made this clear to Mr A.

I have not seen anything that would support Compass's claim that it warned Mr A about the *'high risk nature'* of the Silva Tree investment. In fact, in the suitability report dated January 2010, it said:

*£20,945.60 is earmarked for your own investment into a timber investment called the Princess Project run by Silva Tree. I have not discussed, advised on, or made recommendations regarding this investment.*  
(bold is my emphasis)

In view of this it would appear that Compass is mistaken in its recent claims that its adviser warned Mr A about the *'high risk nature'* of this investment.

I don't think it was fair or reasonable for Compass to have arranged a SIPP, so that Mr A could invest in the Silva Tree investment, without alerting Mr A to the high-risk nature of the investment. Given the information it had gathered about his personal and financial circumstances it knew that, even if Mr A was willing to invest over 25% of his pension pot in this apparently illiquid, non-standard investment, he did not have the capacity for loss.

I think Compass's adviser ought reasonably to have been aware that the risk profile of the Silva Tree investment – with projected returns of over 16% per year – was not suitable for Mr A's stated *'balanced'* attitude to investment risk. Likewise, from the information I have seen it appears the leasehold agreement from Silva Tree was *'valid'* until September 2030. This end date for the lease was five years past Mr A's intended retirement date. I think Compass should have alerted Mr A to this and to the likely implications of this for his intended retirement.

I haven't seen anything in the information that has been provided to this service to show Compass advised Mr A against moving his personal pension pot to a SIPP. It appears that Compass did not take any steps to discuss Mr A's wish to invest in the Silva Tree investment or to discourage him from investing in this high risk, illiquid investment.

Given Mr A's lack of investment knowledge and experience I don't think it was fair or reasonable for Compass to set up a SIPP and transfer Mr A's personal pension pot simply so he could invest nearly £21,000 in the Silva Tree investment, without taking any steps to explore why Mr A was apparently keen to invest in this timber investment.

As our investigator noted, the exact nature of the Silva Tree investment is unclear. The marketing material for the investment says it is not a collective investment scheme. But it does appear to have many of the characteristics of an unregulated collective investment scheme (UCIS).

If Compass had made Mr A aware how high risk the Silva Tree investment was, I don't think he would have gone ahead with the investment. He would therefore not have had any need to transfer his pension pot from his personal pension provider to the SIPP.

But, even if I were to accept that the advice to transfer his personal pension pot to a SIPP, in order to invest over 25% of his pension pot in a high risk, illiquid investment was suitable advice, I don't think the advice Compass gave Mr A on investing the rest of his pension pot was suitable.

The fact find information Compass recorded clearly set out that Mr A's attitude to investment risk for pension planning was 'balanced'. As he had invested over 25% of his pension pot in a high-risk investment, I think Compass should have taken this into account when it advised him on investing the rest of his pension pot.

It advised him to invest £47,500 in a 'balanced portfolio' managed by a third party on a discretionary basis. I think this advice failed to take into account that Mr A intended to invest over 25% of his pension pot in a high-risk investment. As a result, Mr A was advised to take more risk with his pension savings than he wanted to take. In view of this I think the recommendation to invest in the balanced discretionary portfolio was unsuitable when Mr A's Silva Tree investment is taken into account.

I am also not persuaded that the advice to invest in a portfolio that was managed on a discretionary basis was necessary given the additional costs involved. I have reached this view as I note that the suitability report set out that Compass would receive an ongoing fee '*to pay for ongoing advice*' as it said '*there will be a need to carry out regular annual reviews of the equity investments.*' Given the size of Mr A's pension pot, and that Compass was charging him for ongoing advice, I think any fund switches required could have been arranged within Mr A's existing personal pension plan, rather than incurring the higher charges involved in both the SIPP and the fees paid to the third party discretionary manager.

Having carefully considered the merits of Mr A's complaint, I think the advice he received to transfer his personal pension pot to a SIPP, in order to invest in a high risk overseas timber investment and a 'balanced' discretionary managed portfolio was unsuitable.

I have set out below what Compass needs to do to put matters right and to compensate Mr A for the worry and upset its unsuitable advice has caused him.

## **Putting things right**

### **Fair compensation**

My aim is that Mr A should be put as closely as possible into the position he would probably now be in if he had been given suitable advice.

I take the view that Mr A would have invested differently. It's not possible to say *precisely* what he would have done differently. But I'm satisfied that what I've set out below is fair and reasonable given Mr A's circumstances and objectives when he invested.

### **What must Compass do?**

To compensate Mr A fairly, Compass must:

- Compare the performance of Mr A's investment with that of the benchmark shown below. If the actual value is greater than the fair value, no compensation is payable.

If the fair value is greater than the actual value there is a loss and compensation is payable.

- Compass should add interest as set out below:
- Compass should pay into Mr A's pension plan to increase its value by the total amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.
- If Compass is unable to pay the total amount into Mr A's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore, the total amount should be reduced to *notionally* allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr A won't be able to reclaim any of the reduction after compensation is paid.
- The *notional* allowance should be calculated using Mr A's actual or expected marginal rate of tax at his selected retirement age.
- It's reasonable to assume that Mr A is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr A would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.
- Pay to Mr A £300 for the worry and upset this matter has caused him.

Income tax may be payable on any interest paid. If Compass deducts income tax from the interest it should tell Mr A how much has been taken off. Compass should give Mr A a tax deduction certificate in respect of interest if Mr A asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

| Portfolio name | Status                    | Benchmark                                           | From ("start date") | To ("end date")           | Additional interest                                                                                                                         |
|----------------|---------------------------|-----------------------------------------------------|---------------------|---------------------------|---------------------------------------------------------------------------------------------------------------------------------------------|
| SIPP           | Some liquid/some illiquid | FTSE UK Private Investors Income Total Return Index | Date of investment  | Date of my final decision | 8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance) |

### **Actual value**

This means the actual amount payable from the investment at the end date.

It may be difficult to find the *actual value* of the portfolio. This is complicated where an asset is illiquid (meaning it cannot not be readily sold on the open market) as in this case. Compass should take ownership of any illiquid asset by paying a commercial value acceptable to the pension provider. The amount Compass pays should be included in the actual value before compensation is calculated.

If Compass is unable to purchase the illiquid asset, its value should be assumed to be nil for the purpose of calculating the *actual value*. Compass may require that Mr A provides an undertaking to pay Compass any amount he may receive from the illiquid asset in the future. That undertaking must allow for any tax and charges that would be incurred on drawing the receipt from the pension plan. Compass will need to meet any costs in drawing up the undertaking.

### ***Fair value***

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

Any additional sum paid into the investment should be added to the *fair value* calculation from the point in time when it was actually paid in.

Any withdrawal from the SIPP should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if Compass totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

The SIPP only exists because of illiquid assets. In order for the SIPP to be closed and further fees that are charged to be prevented, those assets need to be removed. I've set out above how this might be achieved by Compass taking over the illiquid assets, or this is something that Mr A can discuss with the provider 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. If Compass is unable to purchase the illiquid assets, to provide certainty to all parties I think it's fair that it pays Mr A an upfront lump sum equivalent to five years' worth of wrapper fees (calculated using the fee in the previous year to date). This should provide a reasonable period for the parties to arrange for the SIPP to be closed.

### **Why is this remedy suitable?**

I've decided on this method of compensation because:

- Mr A wanted Capital growth and was willing to accept some investment risk.
- The FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return.
- Although it is called an income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mr A's circumstances and risk attitude.

### **My final decision**

I uphold this complaint. My decision is that Compass Wealth Management Consultants

should pay the amount calculated as set out above.

Compass Wealth Management Consultants should provide details of its calculation to Mr A in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 24 November 2022.

Suzannah Stuart  
**Ombudsman**