DRN-3376449

The complaint

The complaint is about advice given to Mr W in 2011 by Howard Taylor Associates (HTA) in connection with Mr W's pension arrangements.

What happened

Following advice in September 2011 from HTA, Mr W switched his personal pension plan to a SIPP (self invested personal pension) with a new provider. By 8 November 2011, £38,303.52 had been transferred to the new SIPP. £30,000 was then invested in a development site. Mr W purchased two plots. Confirmation that the purchases had been completed was issued on 6 December 2011.

There was correspondence about the investment in 2013. HTA says there were also meetings about the investment, which had encountered difficulties in obtaining planning permission. HTA says Mr W attended and participated in those meetings.

HTA referred to its letter of 15 August 2013. The letter was headed (in bold):

'THIS LETTER IS IMPORTANT: IT CONCERNS YOUR SELF INVESTED PERSONAL PENSION ("SIPP") INVESTMENT …. LAND INVESTMENT SCHEME

- **The Financial Conduct Authority ("the FCA") has concerns about the SIPP sales process that has been used at Howard Taylor Associates ("HTA").**
- **We are offering a review of whether your SIPP is suitable for your needs.**
- **Please read this letter carefully and take the suggested action.'**

The letter went on to explain that HTA had been asked to write to Mr W by the FCA. It had reviewed a sample of cases where HTA had promoted the investment through a SIPP in the land scheme, an unregulated Collective Investment Scheme (UCIS). The review had highlighted that HTA had, in certain circumstances, promoted UCIS to individuals who weren't eligible to receive such a financial promotion. The FCA had asked HTA to offer an opportunity to have the recommendation reviewed. Mr W should complete and sign the enclosed form to indicate if he wanted to the advice reviewed or if he was satisfied with the advice he'd received and didn't wish HTA to review it. Mr W was asked to return the form within the next 28 days.

The letter added that the FCA required HTA to inform Mr W that if he wished to complain about the advice he'd been given he must do so within six years from when the advice was given or, if longer, three years from the date he ought reasonably to have been aware that a loss had been sustained.

HTA sent a reminder to Mr W on 27 November 2013. The letter referred to the previous letter and invited Mr W to have his file reviewed. It was a final reminder and, if he didn't respond within four weeks, HTA would take no further action. A final letter was sent on 3 January 2014 referring to the previous letters and saying that as Mr W hadn't responded his file wouldn't be included in any review and no further action would be taken.

Mr W's representative made a subject access request (SAR) to HTA on 27 July 2018. HTA replied on 10 September 2018. I've also seen an email from Mr W's representative to Mr W on 7 February 2019. A draft of the complaint was attached. Mr W replied the same day to say he'd read the draft complaint and was happy for his representative to proceed with the claim.

Mr W, through his representative, complained on 11 February 2019 about HTA. In its reply dated 8 March 2019 HTA said the complaint had been made too late. The advice had been given in September 2011, more than six years earlier. And the complaint had been made more than three years since Mr W knew or ought reasonably to have known he had cause for complaint.

The complaint was referred to us on 5 September 2019 by Mr W's estate. Tragically Mr W had committed suicide soon after his complaint had been made to HTA.

I issued a jurisdiction decision on 25 May 2021. I said the complaint had been made outside the six and three year periods in DISP (Dispute Resolution) 2.8.2R (2). But I agreed with the investigator that Mr W's circumstances were exceptional and that his failure to comply with the time limits was as a result of exceptional circumstances. I said we could consider the complaint.

HTA didn't accept that and made further representations. Because HTA was so unhappy and as we're required to keep jurisdiction under review throughout our consideration of a complaint, I reviewed the question of whether the complaint had been made in time.

I issued a provisional decision on 20 October 2021. As I thought the complaint had been made outside the time limits in DISP 2.8.2R, I focused on whether Mr W's circumstances were exceptional and such that meant he was unable to complain earlier and within the applicable time limits. I maintained that, in my view, Mr W's circumstances were exceptional.

HTA still didn't accept that and wanted to see further evidence from the GP. We got further information which we shared with HTA.

I issued a jurisdiction decision 25 February 2022. I said, in my view, for the reasons I set out, the failure to comply with the time limits in DISP 2.8.2R was a result of exceptional circumstances. I said we could consider the complaint.

I also said that I'd be moving on to consider the merits of the complaint. I asked HTA for any further comments about that. I said, and as HTA would be aware, the question of jurisdiction remains open throughout the course of the complaint, up to and until a final decision is issued. And that, if HTA had any new evidence about jurisdiction, then HTA should provide it, along with any comments about the merits of the complaint. But, in the absence of any fresh evidence, I had decided about jurisdiction and so, going forwards, I'd only be dealing with the merits of the complaint.

HTA didn't make any further comments (about jurisdiction or merits) by the deadline given.

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.

As I've already said, we're required to keep jurisdiction under review throughout our consideration of a complaint, up to and until we issue a final decision. I've done that. But I haven't changed my mind. For the reasons I've explained previously (in my provisional and

jurisdiction decisions) in my view the failure to comply with the time limits in DISP 2.8.2R was as a result of exceptional circumstances and we can consider the complaint.

Moving on to the merits of the complaint, I explained in my provisional decision dated 20 October 2021 that I agreed with the investigator, and with the reasons he gave, that HTA's advice that Mr W switch to a SIPP so that he could invest the bulk of his pension fund in the land scheme, was unsuitable. That remains my view. I've repeated here what I said.

The investment was a UCIS and, as highlighted by the FCA, should only have been promoted to certain types of retail customers. UCIS are generally high risk. They may be suitable for some investors (but usually only then for a proportion of the investor's overall assets). I can't see that a UCIS was suitable for Mr W. He wasn't a sophisticated investor or a high net worth client.

The investment was speculative. Its success relied on securing planning permission which wasn't forthcoming. A very large proportion (almost 80%) of Mr W's SIPP fund was invested in a single high risk investment. The lack of diversification increased the overall risk.

I'm not sure if the assessment of Mr W's attitude to risk as adventurous was credible. And, even if he'd said that he wanted to take a high degree of risk with his pension fund, I don't think he had the capacity for loss to take that level of risk. He had some other investments but these were relatively modest and included some higher risk shares. I don't think he should have been advised to take a high degree of risk with his pension fund. I think he should've been told to retain his existing personal pension plan.

Putting things right

In awarding redress my aim is to put Mr W's estate (and/or Mrs W as the sole executrix and residual beneficiary) in the position it would've been in if Mr W had retained his personal plan with his previous provider. I set out in my provisional decision the redress I proposed (which was in line with what the investigator had suggested) and which I've largely repeated below.

Howard Taylor Associates should contact Mr W's previous provider and ask it to ascertain what Mr W's fund would've been worth had Mr W not switched to the SIPP. If Howard Taylor Associates has any difficulty in doing that we can assist. Or if Howard Taylor Associates needs an authority from the estate it should let us know. Howard Taylor Associates should ask the previous provider if it can say what Mr W's fund would've been worth when he died, what death benefits would've been payable and provide a copy of any nomination form. That notional value can then be compared with the actual value of the SIPP to ascertain if there's a loss.

In looking at what the SIPP is worth, if the land investments remain illiquid then, as their actual value will be difficult to ascertain, a nil value should be assumed for the purposes of calculating redress. Howard Taylor Associates should take ownership of the illiquid investment by paying a commercial value acceptable to the SIPP provider. That amount should be deducted from the loss.

If Howard Taylor Associates is unable to purchase the investments their actual value should be assumed to be nil for the purposes of the calculation. Howard Taylor Associates may wish to require an undertaking from Mr W's estate to pay Howard Taylor Associates any amount that may be received from the investments in the future. That undertaking must allow for any tax and charges that would be incurred on drawing the receipt from the pension plan. Howard Taylor Associates will need to meet any costs in drawing up the undertaking.

If the illiquid investments are removed from the SIPP that should allow the SIPP to be

closed. And no award for future SIPP fees will need to be made. But, if Howard Taylor Associates isn't able to purchase the investments and the SIPP can't be closed, then Howard Taylor Associates must pay an amount equivalent to five years' worth of SIPP fees (calculated using the previous years' charges). That gives a reasonable period for the SIPP to be closed. Mrs W's representative should confirm to Howard Taylor Associates the current position in relation to the SIPP and if it remains open and whether the SIPP provider has been asked if the SIPP can be closed – I'm aware that in some circumstances some SIPP operators will permit that where it appears that an investment is illiquid and any return is unlikely. The SIPP operator should also be able to say what value is currently attributed to the investment (or what value, if any, was attributed if the SIPP has been closed).

My final decision

I uphold the complaint. Howard Taylor Associates must pay redress as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr W to accept or reject my decision before 20 April 2022.

Lesley Stead
Ombudsman