

The complaint

Mr G complains that Kingswood Law IFA gave him unsuitable advice to transfer his pension funds from a small self-administered scheme (SSAS) to a self-invested personal pension (SIPP). He says their advice led to a loss when his investments later failed.

What happened

Mr G first met with Kingswood Law in November 2011 to discuss his pension. At that time Mr G had a SSAS which he'd had since 2007.

Kingswood Law say that Mr G had experienced difficulties in administering the scheme having previously removed the professional trustees.

In November 2011, Kingswood Law completed a fact-finding exercise with Mr G. It recorded the following;

- He was 58, married and had no financial dependants.
- He was employed as a Managing Director earning an annual salary of £65,000. He also generated an annual income of £21,000 from other sources;
- He was a trustee of a SASS with a total transfer value of £171,217.87. He also had a Personal Pension Plan with a fund value of £37,317.26. This was invested in a with-profits (85%) and managed fund (15%);
- He owned his home with his wife, valued at £350,000 with an outstanding mortgage of £187,000;
- He held investments worth £15,000 and jointly held savings of £55,000;
- He was categorised as a moderately adventurous investor, scoring 8 out of 10 on a risk profile.

In December 2011 Kingswood Law sent Mr G a recommendation report. It recommended he transfer his funds from his SSAS and open a SIPP. The report said Mr G's investment strategy going forward had not been set in stone, but it was most likely to include third party loans and property. Kingswood Law recommended a specific SIPP provider which would allow this type of investment and set out their initial and on-going fees.

Mr G accepted Kingswood Law's recommendation and the SIPP was opened in April 2012. Mr G paid Kingswood Law 2% of the transfer value as an initial fee and agreed to pay 1% per year for on-going advice.

In November 2012 Kingswood Law introduced Mr G to an unregulated business - Sipp Club. Kingswood Law say Sipp Club was aimed at sophisticated or high net worth individuals and provided information about investments that could be held in a SIPP.

Mr G made an investment in a UK hotel of around £40,000 in April 2013 and a further £100,000 investment in a loan note for an overseas property group called Dolphin Capital in October 2013.

In 2018 the Dolphin Capital investment failed to mature as expected and later entered into

bankruptcy proceedings in Germany where it was based. So, Mr G says he's suffered a financial loss as a result of his investment in it.

In September 2019, Mr G complained to Kingswood Law via a professional representative. In summary he said Kingswood Law failed to give him suitable advice when they advised him to transfer into a SIPP, as they didn't consider the underlying investment in Dolphin Capital. He said the investment wasn't suitable for him and he'd lost out as a result.

In their response Kingswood Law said their advice to transfer into a SIPP wasn't given in order to facilitate an investment in Dolphin Capital, as the investment happened some time after their advice to transfer. They said their advice to transfer was because of Mr G's objective of moving out of the SSAS. Kingswood Law went on to say that Mr G had made the investment in Dolphin Capital after hearing about it from Sipp Club, not Kingswood Law. And he didn't ask them for any advice on the investment before making it himself. So, Kingswood Law didn't think they were responsible for Mr G's losses.

Mr G was unhappy with Kingswood Law's response and so brought his complaint to our service. Our investigator said Kingswood Law couldn't have given Mr G suitable advice without considering the underlying investments he was going to make. She concluded that Mr G had a need to transfer out of his SSAS into a SIPP, but should have been advised to invest in medium risk funds. And therefore, had suffered a loss as a result of Kingswood Law's lack of appropriate advice.

Kingswood Law disagreed with our investigator's opinion. They provided a detailed submission which in summary said;

- Mr G was a high net worth individual. In January 2012, while renewing his life cover, he'd said his income was £140,000. He was also a director of several firms and had previous investment experience.
- Without their advice Kingswood Law didn't think it was fair to say Mr G would have invested in mainstream funds.
- Kingswood Law hadn't advised Mr G on the Dolphin Capital investment; he'd found that through Sipp Club who only dealt with sophisticated or high net worth investors.
- In 2014 Kingswood Law gave regulated advice to Mr G to invest in a low risk Fund to balance out his high-risk investments.

I sent Kingswood Law and Mr G my provisional decision on 18 March 2022. In summary I said;

- I wasn't satisfied the evidence showed Mr G was a high net worth investor.
- Kingswood Law had failed to provide Mr G with any investment advice when he transferred his pension from the SSAS to the SIPP.
- There was little evidence to show Mr G was experienced in investing in commercial property or loan notes.
- Kingswood Law had a duty to consider whether the intended underlying investments in the SIPP were suitable, but they didn't.
- A transfer to a SIPP could have been suitable had Kingswood Law developed a suitable investment strategy.
- Kingswood Law failed to demonstrate how the pension would provide an income for Mr G in retirement.
- I didn't think Mr G would have been introduced to SIPP Club and invested in Dolphin Capital if Kingswood Law had developed a suitable investment strategy when transferring his pension.

Mr G accepted my provisional decision. Kingswood Law provided a detailed submission in response to my provisional decision. In summary they said;

- Mr G was a sophisticated client from the outset. He was the director of a large firm and already had a SSAS. He's also directed numerous other companies.
- Mr G wasn't relying on Kingswood Law to invest in funds. He'd considered and made numerous other investments before Dolphin Capital.
- Mr G had become a high net worth client during the course of engagement with Kingswood Law. And he'd confirmed that to Kingswood Law, Sipp Club and the SIPP provider.
- Mr G had also made a complaint against the SIPP provider, so they didn't think he should be entitled to compensation from both parties.

Mr G's complaint has now been returned to me for a final 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.

Mr G, via his representatives, provided detailed submissions to support the complaint, which I've read and considered carefully. However, I hope he won't take the fact my findings focus on what I consider to be the central issues, and not in as much detail, as a discourtesy.

The purpose of my decision isn't to address every single point raised. My role is to consider the evidence presented by Mr G and Kingswood Law, and reach what I think is an independent, fair and reasonable decision based on the facts of the case.

But having reconsidered all of the evidence in this case again, I'm upholding Mr G's complaint for much the same reasons that I explained in my provisional decision. I'll explain why.

What were Kingswood Law's responsibilities?

As a regulated firm, Kingswood Law had many rules and principles that they had to adhere to when providing advice to Mr G. Many of these were found in the regulators handbook under the conduct of business sourcebook (COBS) and principles for businesses (PRIN).

The most relevant rules to this complaint are;

- COBS 2.1 says a firm must act honestly, fairly and professionally in accordance with their clients best interests.
- COBS 9.2 says a firm needs to obtain the necessary information regarding their clients knowledge and experience in the investment field, financial situation and objectives.
- PRIN 6 says a firm must pay due regard to their customers interests and treat them fairly.
- PRIN 9 says a firm must take reasonable care to ensure the suitability of its advice.

Throughout the years the regulator has also issued supplementary alerts and guidance for firms providing advice and recommendations in situations like this. In January 2013 the then regulator, the Financial Services Agency (FSA), issued an alert regarding advice to transfer pensions. Amongst other things, it said;

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's 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.

Although this alert was issued after Mr G transferred his pension, it didn't mark a change in the expectations placed on a business. It was sent to remind businesses of their existing obligations.

Did Kingswood Law comply with their responsibilities?

I don't think they did, I'll explain why.

When Mr G first approached Kingswood Law they completed a fact-find and risk assessment. The fact-find recorded that Mr G had a main income of £65,000 with £21,000 coming from another source. It recorded that he had £15,000 savings in stocks, shares, bonds or ISA's, and he had £55,000 saved jointly with his wife.

Kingswood Law say that Mr G was a high net worth individual. But generally, to be considered high net worth, consumers need to have an income over £100,000 or hold assets in excess of £250,000. And the fact find recorded neither of these things.

Kingswood Law say Mr G's income increased after the fact find in early 2012, as they had his income recorded as £140,000 when they reviewed his life cover. I asked for evidence of this and Kingswood Law sent a handwritten note from the time. But the note had details of both Mr G and his wife. There was a £120,000 figure recorded under 'current finances'. But the document isn't persuasive that the £120,000 was referring to Mr G's income alone. It could have easily referred to a joint income of Mr and Mrs G. Which was a similar figure to what was recorded as their joint income in the fact find conducted just three months earlier.

Mr G has also sent us his tax returns from that time. His tax return for 2011/2012 showed an income of around £40,000; in 2012/2013 an income of around £85,000; and in 2013/2014 an income of around £76,000. I also haven't seen sufficient evidence that his assets exceeded the £250,000 of assets required to be classified as high net worth.

Kingswood Law have provided evidence that Mr G filled in for his SIPP provider in November 2013 that indicated he thought he was a high net worth individual. They also provided a note of an email Mr G had sent them in January 2014 where Mr G acknowledged that he understood property and loan notes were for high net worth or sophisticated investors. Kingswood Law also say Mr G would have had to confirm to SIPP Club that he met their criteria too.

The evidence supports the assertion that Mr G thought he was a high net worth investor, even though his income and value of his assets didn't appear to have been high enough. Even if Mr G was a high net worth investor, the relevant rules in COBS regarding the

promotion of non-standard investments didn't include the term high net worth until January 2014.

At the time of the advice in 2011, COBS described the type of client to whom these non-standard investments could be promoted to. Which included;

A person in relation to whom the firm has undertaken an adequate assessment of his expertise, experience and knowledge and that assessment gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the person is capable of making his own investment decisions and understanding the risks involved;

While Kingswood Law maintain it wasn't them who promoted the investments to Mr G. It shows that if Kingswood Law knew it was Mr G's intention to invest in these types of investments, they ought to have assessed his knowledge and experience of the specific types of investments he was likely to make – as the FSA said in their January 2013 alert.

At the time of the recommendation Kingswood Law gave in 2011, COBS categorised clients as retail or professional. To be a professional client, there was a strict criteria which Mr G didn't meet.

COBS also said a business must notify their client of their categorisation before providing a service – especially if they were to be categorised in such a way as to limit the protections available to them. And I've seen no evidence that Mr G was treated, or told he was being treated, as anything but a retail customer

So, even if Mr G's income had exceeded £100,000 – which I don't think it did – that wasn't enough to mean it was suitable for Mr G to invest in whatever he liked. Importantly here, Mr G was paying Kingswood Law an on-going adviser fee of 1% of his fund each year. So, his relationship with Kingswood Law continued to be an advisory one and they needed to act in Mr G's best interest throughout their relationship.

In their suitability report Kingswood Law recorded Mr G's objectives in seeking advice from them. They recorded one of his objectives as having '*a wider investment choice which now meet your current circumstances and provide a diversified portfolio in line with your attitude to risk.*'

It recorded that Mr G's '*investment strategy for going forward is not set in stone it is most likely to include third party loans and property which you are familiar with.*'

The report also said Mr G's financial goal at age 65 or earlier was to receive a monthly income of £6,500. And that by retirement age, Mr G was planning to have paid off his outstanding mortgages and have £1,500,000 jointly in savings with his wife. He was prepared to invest £1,000 a month into his pension.

I've seen no dispute that Mr G approached Kingswood Law for advice about his pension. And I think it's relatively clear that he needed it. I say that because the vast majority of his pension savings had been held in cash for several years, so its purchasing power is likely to have fallen during that time due to the effect of inflation.

Mr G says he needed help in deciding what to do with his funds. He says he was 58 – so not too far away from retirement – and was looking for advice. But Kingswood Law initially failed to provide Mr G with any investment advice. And I haven't seen any persuasive evidence as to why that was in Mr G's best interests. I'll explain why.

Kingswood Law recorded that no investment strategy was set in stone, but Mr G was likely to invest in loan notes or commercial property. Mr G disputes this. He says he was looking to Kingswood Law to advise him on what to invest in with no pre-conceived plans.

As I've pointed out earlier, Kingswood Law had a duty to take into account the overall investment strategy when advising to transfer. It was Kingswood Law's role to provide Mr G with suitable advice and in order to do so, they needed to know his investment experience in the specific fields that he was intending on investing in.

While Mr M had previously invested in a commercial property. It was a hotel that he worked and lived in as his marital home. And he only lived there for 20 months before selling the hotel. Mr G says his wife's buy to let property was also a previous marital home which they decided not to sell due to its value dropping.

I've seen no evidence that Mr G was particularly experienced in investing in commercial property, especially inside a pension wrapper which adds to the complexity of the arrangement. Whilst he had previously considered holding commercial property in his SSAS, he never did and so hadn't gained experience in this field.

Similarly, before approaching Kingswood Law I haven't seen any persuasive evidence that Mr G was experienced in investing in loan notes either.

Kingswood Law say that Mr G having a SSAS demonstrates that he was not a normal retail client. But Mr G only had a SSAS because he'd considered investing in a post office several years beforehand. When he didn't make that investment, the funds sat in cash for several years. So, Mr G had never held a commercial property in his pension, and had no evidence of making non-standard investments of his own choosing.

I think the pension history of Mr G's SSAS demonstrates that without the input from an adviser, Mr G hadn't made any pension investment decisions for several years. It doesn't demonstrate, as Kingswood Law suggest, that Mr G was an experience investor who knew the risks of non-standard investments.

Kingswood Law have sent us a list of several investments that Mr G either considered or proceeded with. But the list started from August 2012 – several months after their advice to transfer Mr G's pension. And considering an investment isn't the same as having had experience in it. Mr G has explained that many of the investments mentioned by Kingswood Law were either put forward by them or SIPP Club.

The rules Kingswood Law had to follow said they needed to understand if Mr G had the necessary experience and knowledge in order to understand the risks involved in the investments they thought he was going to make in his SIPP. But it doesn't appear that Kingswood Law considered whether Mr G had any experience in the intended investments or whether they were suitable for him.

Kingswood Law also put a lot of weight on the fact Mr G has held several roles as a director over the years. But holding these roles doesn't mean Mr G had any greater experience or knowledge of non-standard investments. There's no evidence these roles were explored during the fact find process in 2011 or that Kingswood Law took them into consideration as part of their recommendation. Mr G has explained that none of the roles exposed him to the types of pension investments he later made.

Another important aspect was not only Mr G's experience in the intended investments, but whether that matched his attitude to investment risk and capacity for loss.

Kingswood Law sent us the attitude to risk (ATR) questionnaire that both Mr G and his wife completed.

The questionnaire itself is incomplete as it didn't record Mr G's scores or indicate his ATR on the form. But Kingswood Law said in their suitability report that Mr G's ATR was 8 out of 10 – moderately adventurous.

But Kingswood Law had a responsibility to truly know their client. They needed to probe and understand his ATR. And I haven't seen sufficient evidence that they did. Mr G's answers to the ATR questionnaire may have led to a categorisation of 'moderately adventurous'. But that doesn't mean the intended investments were suitable.

As well as Mr G's ATR, the rules required Kingswood Law to consider Mr G's financial situation so that they could be satisfied he had the capacity for loss to bear the investment risks. The fact-find recorded that Mr G had some savings and while he owned a house and buy-to-let property, both were heavily mortgaged. The buy-to-let also being on an interest only mortgage. The pension itself made up the vast majority of Mr G's retirement provisions and he was only seven years away from his intended retirement age. So I don't think Mr G had a particularly high capacity for loss.

Investments in commercial property and loan notes inside a SIPP carry a high risk. Which is why they are usually reserved for high net worth individuals or sophisticated investors that have experience in those investments, have a high attitude to investment risk and also have the capacity to lose potentially all of the investment should it fail. And as I've said, I don't think Mr G had the capacity for loss for a large proportion of his pension to be invested in those things. Kingswood Law's own assessment of Mr G's ATR also didn't indicate it was high enough to say these investments were suitable.

So, if it truly was Mr G's intention to invest in these types of investments in his SIPP, Kingswood Law had a duty to tell Mr G that these type of investments were outside of his attitude to investment risk and capacity for loss.

I don't think Kingswood Law could say that this pension transfer was suitable for Mr G without understanding or recommending a clear investment strategy for him. After all, the failure to have any suitable investments held in his SSAS is what led Mr G to wanting advice from Kingswood Law in the first place. It was Kingswood Law's role in this case to provide suitable investment advice along with the transfer recommendation. And failing to give suitable investment advice meant that the advice to transfer without an investment strategy in place was unsuitable.

Kingswood Law say that by taking control of the SSAS from the professional trustees, it shows Mr G was comfortable in making his own investment choices. But I disagree. I say that because Mr G never made any investment choices in the SSAS, the funds sat in cash for several years. That shows that on balance, Mr G required investment advice. That's further evidenced by the fact that Mr G still made no investment decisions when the money was transferred into a SIPP in April 2012. It wasn't until he was introduced to SIPP Club several months later that any investments were made at all.

Mr G has confirmed that he was interested in where his funds were invested. And he had previously considered – although he didn't go ahead with – an investment in a commercial property. But he says he wasn't experienced in choosing investments himself and was fully reliant on Kingswood Law to suggest and advise him on investments. And I think the evidence supports that.

Kingswood Law claim that they tried to speak to Mr G about his investments, including a file note from February 2013. But that was almost a year after Mr G had transferred his funds. And while the note simply records a discussion topic as 'cash or funds for balance', Kingswood Law haven't provided any persuasive evidence that they had any in depth conversation with Mr G about that or recommended funds in which Mr G should invest. And I haven't seen any evidence Mr G insisted against any such recommendations.

In 2010, the then regulator, the FSA issued a report regarding good and poor practices when advising clients on investing in unregulated collective investment schemes.

It noted that a UCIS investment like a loan note could be held by a customer if the firm provided full advice based on a comprehensive assessment of the customer's personal and financial situation. And if the firm considered the suitability of the recommended UCIS transaction as part of the customer's overall portfolio risk tolerance, his ATR and the need for capital/income.

The report also gave examples of good practices like where a firm had set a maximum portfolio proportion for UCIS investments within their client's portfolio. This level was between 3% and 5% and was backed up by the firm's robust and on-going due diligence and monitoring.

In response to my provisional decision, Kingswood Law maintain that Mr G was looking for a business or property to invest in. While that might have been the case, it was Kingswood Law's role to advise Mr G on his investment strategy. And as I've shown, it may have been suitable to recommend a UCIS investment, if the overall portfolio was diverse and it fit in line with Mr G's ATR and capacity for loss.

Kingswood Law could have left funds aside to make such an investment if that was suitable. But I don't think allowing Mr G to invest a large proportion of his funds in a single high risk investment without pointing out the risks demonstrates that Kingswood Law were following best practice or working in Mr G's best interests.

Had Kingswood Law developed an investment strategy, taking into account good industry practice at the time, a recommendation to transfer from a SSAS to a SIPP could have been suitable advice. Kingswood Law had recorded in the suitability report that it was Mr G's objective to have a diversified portfolio in line with his ATR, which could have been achieved in a SIPP. But without an investment strategy, Kingswood Law didn't act with due skill, care and in Mr G's best interests.

I think it's also important to point out here that, whilst Mr G's objectives may have been the reason why he sought advice, his needs in retirement should have also influenced the advice being given. I say that because someone's objectives aren't always realistic or in their best interests. And the overarching principles governing Kingswood Law said that it needed to work in its client's best interests.

Kingswood Law recorded that Mr G wanted an income of £6,500 in retirement. And the main purpose of a pension is to provide an income in retirement. But Kingswood Law's suitability report fails to address how Mr G is likely to achieve his required income in retirement. That's not surprising considering Kingswood Law didn't assess the likely investments that were to be held in the SIPP.

Mr G had little other pensions or sources of income in retirement. So, his objective of having a reasonable income in retirement should have been considered as one of the most important. Especially considering he only had seven years until he wished to retire. Mr G was likely to need to access his pension within a relatively short amount of time to provide

an income, which adds further weight to the fact that investing a high proportion of his funds in illiquid investments such as property or loan notes was unlikely to be suitable for him.

Kingswood Law failed to show how likely it was Mr G's income objectives would be met through his transfer. Which meant Kingswood Law hadn't paid due regard to their client's interest as they were required to.

Would Mr G have invested in Dolphin Capital and other unregulated investments anyway?

I don't think he would have. I'll explain why.

Kingswood Law say that Mr G asked for an introduction to SIPP Club but Mr G disputes this. He says Kingswood Law recommended SIPP Club to him and made it sound as if SIPP Club were part of the same company as Kingswood Law. Kingswood Law haven't provided any persuasive evidence that Mr G asked to be introduced to SIPP Club and it seems unlikely Mr G would have known about the existence of SIPP Club of his own volition. On balance, I think it's more likely that Kingswood Law's director – also being a director of SIPP Club at that time – was the one who introduced Mr G to the idea.

But as I've said, Kingswood Law should have treated Mr G as a retail customer. I think it's likely, due to the director being involved in both companies, that Kingswood Law would have known the investments promoted by SIPP Club were inappropriate investments for a retail customer with little to no experience of non-standard investments. And so, by introducing Mr G to SIPP Club, they weren't acting in his best interests. Therefore, I don't think Kingswood Law should have introduced Mr G to SIPP Club. Because in doing so, it's recommendation that he transfer his pension to a SIPP with no alternative investment strategy enabled him to make the unsuitable investments.

It's also important to note that during the time Mr G received promotions from SIPP Club, he was still paying Kingswood Law a 1% fee for their on-going advice. And whilst being aware of the unsuitable investments Mr G was making, Kingswood Law failed to act in his best interest by stepping in and pointing out the risks and unsuitability of the investments he was making.

Kingswood Law say Mr G was aware of the risks of the investments he made but I haven't seen evidence of that. As I've said, there's no evidence Mr G was experienced in investing in unregulated loan notes.

On balance I think Mr G only made investments through SIPP Club because Kingswood Law failed to provide him with appropriate investment advice when he first transferred his funds. Had they given suitable advice; he wouldn't have had a large amount of cash uninvested in his pension. So, it follows that it wasn't likely Mr G would have invested in these unregulated investments but for Kingswood Law's actions.

In summary

I haven't seen any persuasive evidence that Mr G had made up his mind as to the types of investment he wanted to make. I also haven't seen any persuasive evidence that Mr G was against investing in regulated, mainstream funds. There's simply little evidence that Kingswood Law ever discussed investing in regulated funds until 2014. And when they did, Mr G accepted their recommendation and agreed to invest in them.

On balance I think if Kingswood Law had recommended liquid, regulated, mainstream investments which were aligned to Mr G's attitude to investment risk when he first transferred in 2012, there's no reason why Mr G would have gone against their advice.

There subsequently would have been no need to introduce Mr G to SIPP Club where he was promoted unsuitable investments. And I've seen no compelling evidence Mr G was likely to have sought out that type of investment had his pension already been invested in a suitable way.

Therefore, I hold Kingswood Law responsible for the losses Mr G suffered by having not been given suitable investment advice when transferring his pension.

While Mr G has made a complaint to the SIPP provider. This complaint focuses on the actions of Kingswood Law. And as I've said, I think Kingswood Law's action have led to Mr G's losses. I say that because the adviser's role is pivotal and of primary importance. If Kingswood Law had acted as they should have done, Mr G wouldn't be in the position he is now. So despite the role the SIPP provider potentially had, I think Kingswood Law should meet Mr G's losses in full. I think that approach is fair and reasonable in the circumstances of this case.

Any rights Mr G may have against the SIPP provider (or indeed any other party involved) can be assigned to Kingswood Law. In that way, if Kingswood Law thinks another business is responsible for all or part of Mr G's losses, Kingswood Law can, if so advised, take action against that party to recover all or part of any redress paid out by Kingswood Law to Mr G. And, if Mr G's complaint against the SIPP provider proceeds, the outcome of this complaint against Kingswood Law will be taken into account to ensure that Mr G won't recover any losses twice.

Putting things right

Fair compensation

My aim is that Mr G 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 G may still have transferred to the SIPP but 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 G's circumstances and objectives when he invested.

What must Kingswood Law do?

To compensate Mr G fairly, Kingswood Law must:

- Compare the performance of Mr G'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.

- Kingswood Law should add interest as set out below:
- Kingswood Law should pay into Mr G'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 Kingswood Law is unable to pay the total amount into Mr G'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 G won't be able to reclaim any of the reduction after compensation is paid.
- The *notional* allowance should be calculated using Mr G's actual or expected marginal rate of tax at his selected retirement age.
- It's reasonable to assume that Mr G is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr G 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 G £250 for distress caused by the large reduction in his funds value as he neared retirement.

Income tax may be payable on any interest paid. If Kingswood Law deducts income tax from the interest it should tell Mr G how much has been taken off.

Kingswood Law should give Mr G a tax deduction certificate in respect of interest if Mr G 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 could not be readily sold on the open market) as in this case. Kingswood Law should take ownership of any illiquid assets by paying a commercial value acceptable to the pension provider. The amount Kingswood Law pays should be included in the actual value before compensation is calculated.

If Kingswood Law is unable to purchase illiquid assets, their value should be assumed to be nil for the purpose of calculating the *actual value*. Kingswood Law may require that

Mr G provides an undertaking to pay Kingswood Law any amount he may receive from the illiquid assets in the future. That undertaking must allow for any tax and charges that would be incurred on drawing the receipt from the pension plan. Kingswood Law 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.

Why is this remedy suitable?

I've decided on this method of compensation because:

- Mr G 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 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 G's circumstances and risk attitude.

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £160,000, plus any interest and/or costs that I consider appropriate. If I consider that fair compensation exceeds £160,000, I may recommend the business to pay the balance.

Kingswood Law IFA Limited should provide details of its calculation to Mr G in a clear, simple format.

Determination and award: I uphold the complaint. I consider that fair compensation should be calculated as set out above. My decision is that Kingswood Law IFA Limited should pay Mr G the amount produced by that calculation – up to a maximum of £160,000 (including distress or inconvenience but excluding costs) plus any interest on the amount set out above.

Recommendation: If the amount produced by the calculation of fair compensation exceeds £160,000, I recommend that Kingswood Law IFA Limited pays Mr G the balance plus any interest on the amount as set out above.

This recommendation is not part of my determination or award. It does not bind Kingswood Law IFA Limited. It is unlikely that Mr G can accept my decision and go to court to ask for the balance. Mr G may want to consider getting independent legal advice before deciding whether to accept this decision.

If Kingswood Law IFA Limited does not pay the recommended amount, then any portfolio currently illiquid should be retained by Mr G. This is until any future benefit that he may receive from the portfolio together with the compensation paid by Kingswood Law IFA Limited (excluding any interest) equates to the full fair compensation as set out above.

Kingswood Law IFA Limited may request an undertaking from Mr G that either he repays to Kingswood Law IFA Limited any amount Mr G may receive from the portfolio thereafter or if possible, transfers the portfolio to Kingswood Law at that point.

Mr G should be aware that any such amount would be paid into his pension plan so he may have to realise other assets in order to meet the undertaking.

My final decision

My final decision is I uphold this complaint. I direct Kingswood Law IFA Limited to compensate Mr G as set out above,

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 26 April 2022.

Timothy Wilkes
Ombudsman