DRN-3668442

The complaint

Mr A complains about unsuitable advice he says he received from Mr Y to move two pensions to a self-invested personal pension (SIPP) and use a discretionary fund management (DFM) service. Mr A says Mr Y initially gave him advice acting on behalf of T – an appointed representative of N. But before arrangements were made to implement the advice, Mr Y told him he'd be representing Future Wealth Management (Future) – an appointed representative of Pi Financial Ltd (Pi) – moving forward. So, Mr A says Pi is responsible for the advice.

What happened

Mr A says a family friend had recommended he have his pensions reviewed and he decided to do so because he was worried they were stagnant and wanted to make sure they were working for him. At that point he had two pensions – one defined benefit and one defined contribution.

It's not clear when exactly the review happened but Mr A was referred to Mr Y and a "*Pension Transfer Report*" was produced on 26 April 2017 which covered both pensions. This was amended on 7 June 2017 – again covering both pensions – to reflect an update in the recommended SIPP provider. The adviser was listed as Mr Y on these reports but neither T nor N were mentioned.

I've been provided with a copy of an "*Advice report*" which is missing the first page and so I don't know the date it was produced, but from other correspondence, it's likely this was produced on 8 May 2017. Again, it was unbranded and neither T nor N were mentioned, although it's likely it was sent as T. The report included the following recommendation:

> *I have recommended that you transfer your existing pension benefits to an alternative arrangement for the following reasons;*
>
> - *The pension scheme trustees have offered a comprehensive Cash Equivalent Transfer Value*
> - *The Transfer Value Analysis report has confirmed that your pension commencement lump sum entitlement can be taken immediately upon transfer to a money purchase scheme.*
> - *Your personal circumstances would benefit from the flexibility provided by the pension freedom legislation at retirement.*
> - [The recommended SIPP provider] *has a very competitive, flat rate annual charge of £150…*
>
> *On transfer, I recommend that you utilise the services of a DFM as follows;*
>
> *SG Income & Growth (50%)*

TAM Asset Management (50%)

I recommend that you invest 50% of your pension in each of the portfolios above. This will diversify your pension portfolio. The portfolios are invested in line with your selected attitude to risk of 7…

As you have decided to proceed with the transfer out of the [defined benefit pension]*, the question now becomes which scheme would be the most suitable to receive the transfer to allow you to achieve your main objectives.*

I am recommending that you transfer your pension benefits to a SIPP…We have discounted a UK Stakeholder plan as a suitable option as you cannot get active fund management and choice of investments within a stakeholder plan at the same charges you will achieve using [a SIPP]*.*

The main reasons this is advantageous to you at present based on your objectives above are as follows;

1) *Within a SIPP you will be able to access your 25% tax free cash, which is your main priority in considering this transfer.*
2) *By transferring into a SIPP, you have full control over what happens to your full fund value upon death.*
3) *You have full control of your pension fund throughout retirement, allowing you greater investment choice as well as taking an income out at a time and duration that you decide. However this also means you carry the risk.*

Mr A was then sent a letter on T's paper dated 8 June 2017. This read:

Further to suitability letter dated 8th May 2017, please find some amendments detailed below.

The SIPP provider originally recommended [a SIPP provider] *due to difficulties in their administration processes which are negatively impacting on the pension transfer process we have looked at a more suitable provider* [a different SIPP provider]*.*

I have included the new Pension Reports for all of your schemes and you can see the difference in critical yield is minimal but the service will be greatly improved….

Your investments will still go ahead as agreed and discussed with [Mr Y] *and there will be no change to you other than who will be the trustee of your SIPP.*

Further to our conversation, please also find enclosed documentation regarding our change of network as we will no longer be under [N] *as there* [sic] *permissions will be ceasing but will be under Pi Financial Ltd (FCA 186419). This will be under our company Future Wealth Management so if you could please sign the client agreement and accompanying letter and enclose this within the stamped addressed envelope we can start the discharge process for you.*
This again to reiterate doesn't change any of the advice or fees agreed it simply changes the network through which they go through.

Mr A signed the Future client agreement on 12 June 2017 and returned this to Mr Y.

When an investigator asked the SIPP provider who introduced Mr A to it, it said Mr A was introduced to it on 15 June 2017 by Mr Y "*of* [T]*/Future Wealth Management*". The SIPP was set up on that date and the certificate of membership lists Mr Y of T in the financial adviser/introducer section. The annual valuation report dated 25 February 2018 also listed the adviser as Mr Y of T.

N went into administration and an administrator was appointed on 27 June 2017.

The significant transactions on Mr A's SIPP statement are:

- £326,878.78 received from his defined contribution pension on 4 September 2017.
- £13,075.15 sent as a fee with the reference "*ADVISER CHARGES* [T] *PI FINANCIAL*" on 12 October 2017.
- £80,000 taken as tax free cash on 12 October 2017.
- £231,000 received from his defined benefit pension on 20 November 2017.
- £9,240 sent as a fee with the reference "*ADVISER CHARGES* [T]" on 22 November 2017.
- £454,613.63 invested with a DFM on 8 December 2017 in tranches of £250,000 and £204,613.63.
- £57,511.62 taken as tax free cash on 30 October 2019.

Pi confirmed the two fees were sent to it meaning it received a total of £22,315.15 in fees.

The DFM paperwork refers to T in the adviser details section and the email address given is one that belongs to T. This was signed on 30 November 2017.

Mr A later became concerned about the value of his SIPP and the high exit fees the DFM was charging. He complained to Pi saying the advice he'd received from Mr Y was unsuitable and it was responsible for that advice. Pi didn't agree. It said:

- At the same time Mr Y had been trading as Future, he'd also been trading as T.
- It has no record of Mr A in its system and given the nature of the advice, it would have records if the advice had been given as it's appointed representative.
- In October 2017 it'd rejected the DFM service Mr A used in November 2017.
- Mr Y had agreed with N that in some cases where advice had been given by T, but fees not yet paid, the fees would be credited to his account at Pi. Mr A's fee fell into this category.
- It hadn't taken responsibility for advice given by Mr Y while he was trading as T.

An investigator decided that two complaints had been made by Mr A – one about the advice he was given in relation to his defined benefit pension; and one about the advice he was given in relation to his defined contribution pension. Two complaint files were therefore set up and two views were issued.

The investigator was satisfied Pi was responsible for the advice given. In summary he said that although the advice had initially been given when Mr Y was at T, the SIPP had been created and the transfers and investments made after Mr Y had told both Mr A and the SIPP provider that he'd be representing Future moving forward and Mr A had signed a Future client agreement. This combined with the fact the fees had been sent to Pi means Pi is responsible for the advice. And he concluded the advice had been unsuitable.

Pi didn't agree. In addition to the points it'd made in its final response letter, it said:

- The advice had been given by T and Mr A's decision to transfer was based on that advice. Nothing it'd done resulted in Mr A's decision to transfer and invest. He'd already made his decisions before Future and/or Pi were even mentioned and if they hadn't been mentioned he would have continued in the same way. The only difference is that Mr Y might not have received his fees. The "*but for*" test isn't satisfied and there's no causation.

- The letter of 8 June 2017 was clear that the relationship with Future and Pi was a prospective one and there was no suggestion in it that Future and/or Pi would take responsibility for advice already given. In fact, the letter is clear that the move wouldn't change any advice already agreed.

- N had been entitled to the fees and it assumes the agreement to pay them to it instead was to prevent the fees going to N's administration. The fact the fees were paid to it doesn't mean it took responsibility for the advice. At no point did it receive any other fees, commission or payments nor was it given any suitability reports, pension reports or application forms.

- It had no agency for the SIPP and Mr A was never onboarded as a client. T was listed as the financial adviser on the SIPP. And the DFM documentation referred to Mr Y of T.

- On 7 December 2017, Future contacted it to say "[The SIPP provider] *have informed me that Future don't have terms with them so can I ask that you complete the last page of this document and send it back*". The agreement between it and the SIPP provider is dated 18 December 2017 so it had no agency with the SIPP provider when the SIPP was set up, the transfers received, or the investments made.

- An internal email from 27 April 2017 shows Mr Y had handed in his resignation at Pi but this had been put on hold whilst various issues were resolved.

The issue was therefore passed to me for a decision and further information requests were made. As part of that process, a different investigator felt it was incorrect that two complaints had been set up and was satisfied only one should have been. He said there'd been one piece of advice that encompassed both pensions and therefore there's only one complaint. He shared that opinion with both parties and asked for their comments.

Mr A's representative didn't agree. It said the initial advice amounted to two pieces of advice – one in relation to each pension. And that in fact there was a third piece of advice in November 2017 when advice was given on which DFM to use.

I issued a provisional decision saying I was satisfied one financial service had been provided and so all of Mr A's complaint should be addressed in one decision. I was also satisfied:

- Mr Y had advised Mr A to transfer his pensions to a SIPP to use a DFM and was also involved in making the arrangements for this. So, Mr Y had carried out regulated activities, or acts ancillary to regulated activities.

- Although Mr Y had been acting as T, for N, when he initially advised Mr A, I was satisfied he was acting for Pi from 12 June 2017 when Mr A signed a client agreement with Future.

- Even if the DFM recommendation was unauthorised under the appointed representative agreement between Future and Pi, the regulated activities in relation to the SIPP and Mr A's previous pensions weren't and so were within the actual authority of Future. Because the DFM recommendation was done in the course of business for which Pi accepted responsibility, we can look at the complaint.

- Future had been obliged to give advice on the arrangement as a whole and had given advice on the DFM. It was therefore obliged to make sure the transfer, switch and DFM were suitable. Mr A moving away from his existing pensions to a SIPP to use a DFM wasn't in his best interests and Future should have advised him of that.

- If everything had happened as it should have, Mr A would have left his pensions where they were.

I therefore proposed compensation that I was satisfied put Mr A as closely as possible into the position he would probably now be in if he hadn't been given unsuitable advice.

I later wrote to Mr A explaining that the Financial Conduct Authority (FCA) has launched a consultation on changes to its guidance on how to calculate redress for unsuitable defined benefit pension transfers. And I asked whether he would want Pi to calculate any compensation due in line with the guidance in FG 17/9 (as I recommended in my provisional decision) or in line with any new rules or guidance that are expected to come into force in early 2023.

Mr A replied to say he accepts the provisional decision and that he's happy for any compensation due to be calculated in line with the guidance in FG 17/9. Pi replied to say it doesn't agree with my provisional decision. I've read and considered Pi's response in its entirety. In summary, it set out a timeline of the relevant events and said:

- The advice process was concluded before Mr A even became aware of the existence of Pi. Pi isn't responsible for the advice.

- The letter of 8 May 2017 which contained the advice to transfer and use a DFM was clearly from T and neither Future nor Pi had any involvement in it. It also confirmed that ongoing management charges would be paid to T.

- The letter dated 8 June 2017 was clear that the relationship with Pi was prospective and no responsibility was taken for advice previously given by T. That letter was also clear that the decision to transfer and use a DFM had already been made.

- The client agreement with Future wasn't signed until 12 June 2017 and by that point all the actions had been completed that had a "*causative potency*" in relation to the transfer and DFM investment.

- Pi received no fees or commission for the creation of the SIPP or the subsequent investments made.

- *Anderson v Sense Network* established that a principal can restrict the permission it gives to an appointed representative and Future was restricted from doing business with the DFM that was used here. Pi therefore didn't accept responsibility for the transaction.

- Terms of business between the SIPP provider and Future were signed on 12 December 2017 – after both the pension switch and transfer. The SIPP provider can't have been acting on Future's instructions before 12 December 2017 therefore. The only logical conclusion is that the SIPP provider transacted the business on T's behalf. And in fact, the SIPP provider said T's permissions had been enough for it to introduce members. The SIPP certificate of membership and DFM paperwork referring to T are therefore accurate reflections of what was happening at the time. And there's no justification for reaching a different conclusion to the one the contemporaneous documents point to.

- Mr Y would have known he couldn't use the DFM used here when completing business via Future which further points to the fact he completed it via T.

- The *TenetConnect v Financial Ombudsman Service* case I referred to in my provisional decision specifically applies to regulated and unregulated business and there's no basis for saying it also applies to acceptance of responsibility by a principal under Section 39 FSMA. My conclusion also runs contrary to the *Anderson v Sense Network* case which established that a principal can restrict the permission it gives to an appointed representative. Here, Pi forbade its advisors from dealing with the DFM that was used.

- Responsibility must attach to T for the fact Mr Y was using his agency with it.

- At most, Pi's involvement was purely administrative – accepting fees to prevent them being paid to N's administrator. No part of the transaction was completed via Pi, other than the payment of fees so it should have no liability. My decision accepts that no liability should attach to T despite its agency being used for advice and administrative tasks and instead attaches liability to Pi which only completed one administrative task and gave no advice.

- Pi wasn't obliged to revisit the advice given by T and ensure its suitability. In any event, no advisor is under a duty to ensure suitability – advice is suitable unless it's so unsuitable that no reasonable advisor could have given it.

- No complaint would have been made against Pi if either T or N had been able to meet it. The fact they're not able to meet it doesn't mean Pi should.

What I've decided – the number of complaints that have been made

Because my decision is the same as my provisional decision and no further points have been made on this issue, I've repeated my provisional findings below.

The FCA Handbook defines a complaint as:

> *any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a person about the provision of, or failure to provide, a financial service, claims management service or a redress determination, which:*
>
> > *(a) alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience; and*

(b) relates to an activity of that respondent, or of any other respondent with whom that respondent has some connection in marketing or providing financial services or products or claims management services, which comes under the jurisdiction of the Financial Ombudsman Service.

The key question here is whether the complaint is about one or more provisions of a financial service. The advice Mr Y gave encompassed two separate pensions. But that doesn't necessarily mean more than one financial service was provided. To decide how many financial services were provided, I must consider the purpose and nature of the advice.

I know Mr A will be disappointed, but my decision is that his complaint relates to the provision of one overarching financial service. I'm satisfied there was one objective behind the service Mr Y provided – to advise Mr A on his pension arrangements. Specifically, here the advice was to transfer his pensions to a SIPP to use a DFM service. Such an advice service is often delivered in stages and may encompass a number of transactions, but it's still, nevertheless, one service.

No DFM was named at the time of the advice and it's not clear whether one had been chosen at that point. But even if the DFM wasn't chosen until around six months later, as Mr A says, that simply means another transaction potentially occurred at that point. It doesn't change the fact that there was only one overall advice service. And it's the advice service Mr A has complained about. I also note that the DFM was chosen a very short time after the defined benefit pension was transferred to the SIPP which suggests the delay was simply because of logistics.

I'm therefore satisfied one financial service was provided and so I've addressed all of Mr A's complaint in this decision.

What I've decided – jurisdiction

I've considered all the evidence that's been provided. Having done so, I'm still satisfied this complaint is in the Financial Ombudsman Service's jurisdiction. By this, I mean that it's a complaint I can consider against Pi as it concerns acts or omissions of its appointed representative for which it accepted responsibility.

Because my decision is the same as my provisional decision, I've repeated my provisional findings below with my findings on Pi's additional points added.

To carry out regulated activities a business needs to be authorised (Section 19 of the Financial Services and Markets Act 2000 (FSMA)). Future wasn't directly authorised. Instead, it was an appointed representative of Pi. Pi is an authorised firm. It's authorised by the FCA to carry out a range of regulated activities including advising on investments and arranging deals in investments. We can therefore consider complaints about Pi. And this includes some complaints about its appointed representatives.

But this service can't look at all complaints. Before we can consider a complaint, we need to check, by reference to the DISP rules and the legislation from which those rules are derived, whether it's one we have the power to look at.

DISP 2.3.1R says we can:

consider a complaint under the Compulsory Jurisdiction if it relates to an act or omission by a firm in carrying on…regulated activities…or any ancillary activities, including advice, carried on by the firm in connection with them.

Guidance for this rule at DISP 2.3.3G says that:

> *complaints about acts or omissions include those in respect of activities for which the firm…is responsible, to the same extent as if he had expressly permitted it, for anything done or omitted by the representative in carrying on the business for which he has accepted responsibility*.

And Section 39(3) FSMA says:

> *The principal of an appointed representative is responsible, to the same extent as if he had expressly permitted it, for anything done or omitted by the representative in carrying on the business for which he has accepted responsibility*.

The responsibility of a principal was considered in the case of *Anderson v Sense Network* [2018] EWHC 2834 (this case was the subject of an appeal, but the Court of Appeal issued a decision agreeing with the earlier decision). In the High Court, Mr Justice Jacobs said:

> *There is no indication in the wording of section 39, or in the case-law, that indicates that the business for which responsibility is accepted is to be determined not by reference to the contract, but by reference to the authorisations granted to the principal which are to be found in the Financial Services register*.

So, a principal isn't automatically responsible for the actions of its appointed representatives and it's necessary to go beyond looking at the activities Pi was authorised to do. I agree with Pi that whether it's responsible for the actions of Mr Y here is determined by considering the terms of the contract between Future and Pi – the appointed representative agreement.

To decide whether Pi is responsible here, there are three issues I need to consider:

- What are the specific acts Mr A has complained about?
- Are those acts regulated activities or ancillary to regulated activities?
- Did Pi accept responsibility for those acts?

What are the specific acts Mr A has complained about?

Mr A's complaint is about what he says was unsuitable advice from Mr Y and covers the whole period over which that advice was given – from the initial review of his pensions to the inception of the DFM arrangement. That involved a number of different acts:

- The initial advice which seems to have been given on 8 May 2017 following a Pension Transfer Report dated 26 April 2017.
- The amended advice – to reflect the fact a new SIPP operator was being recommended – which was given on 8 June 2017 with an updated Pension Transfer Report dated 7 June 2017.
- Arranging setting up the SIPP which was completed on 15 June 2017.
- Arranging the switch of the defined contribution pension which happened on 4 September 2017.

- Arranging the transfer of the defined benefit pension which happened on 20 November 2017.

- The advice to use the DFM that was used and making arrangements to use that DFM. Exactly when this happened isn't clear, but when I asked Mr A for his recollections of this, he said Mr Y phoned him in November 2017 and recommended the DFM at that point. This is plausible and I have no reason to doubt Mr A's recollection.

Are those acts regulated activities or ancillary to regulated activities?

Section 22 FSMA defines "*regulated activities*" as:

> *(1) An activity is a regulated activity for the purposes of this Act if it is an activity of a specified kind which is carried on by way of business and –*
>
> > *(a) relates to an investment of a specified kind;…*
>
> *(4) "Investment" includes any asset, right or interest.*
>
> *(5) "Specified" means specified in an order made by the Treasury*.

The relevant Order is the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (RAO). Advising on investments is a specified activity under Article 53 RAO. And arranging deals in investments is a specified activity under Article 25 RAO.

It's clear that Mr Y advised Mr A to transfer his pensions to a SIPP to use a DFM. He was also involved in making the arrangements for this. I'm therefore satisfied Mr Y carried out regulated activities, or acts ancillary to regulated activities, in relation to each of the activities listed above.

Did Pi accept responsibility for those acts?

Which business was Mr Y acting for?

To answer whether Pi accepted responsibility for the acts complained of, the first question I need to satisfy myself of is whether Mr Y was acting for Pi when carrying out any of the acts. As I set out in my provisional decision, it's clear that Mr Y was acting as T, for N, when he initially advised Mr A. I accept that the letter of 8 May 2017 was sent as T and neither Future nor Pi had any involvement in it. It's also clear that at that point Mr A wasn't even aware of the existence of Future or Pi. But taking everything into account, I'm still satisfied Mr Y was acting for Pi from 12 June 2017. I say this because:

- On 8 June 2017, Mr Y told Mr A he was amending his advice and was recommending a different SIPP operator. As set out above, the letter set out the advice and then said:

  > *Further to our conversation, please also find enclosed documentation regarding our change of network as we will no longer be under* [N] *as there* [sic] *permissions will be ceasing but will be under Pi Financial Ltd (FCA 186419). This will be under our company Future Wealth Management so if you could please sign the client agreement and accompanying letter and enclose this within the stamped addressed envelope we can start the discharge process for you. This*

again to reiterate doesn't change any of the advice or fees agreed it simply changes the network through which they go through.

- Mr A signed a client agreement with Future on 12 June 2017. Although the "*Initial Services to be Provided*" section was left blank, this had alongside it a section called "*Details of Agreed Fee*" and this had been filled in with "*4% OF ALL TRANSFERS IN*". I'm satisfied this refers to the fee payable for the pension advice provided.

  I accept that Pi received no fees or commission for the creation of the SIPP or the subsequent investments made. But as I've set out above, £13,075.15 was sent to Pi on 12 October 2017 and £9,240 on 22 November 2017 – a total of £22,315.15. Both were initial fees linked to the pension money being transferred into the SIPP. It seems as though Pi retained a portion of the fees – although it initially said all the money was transferred to Mr Y, it later clarified he was subject to a 5% retainer, so he was transferred £21,199.39 and it retained £1,115.76.

  Pi says N had been entitled to the fees, but Mr Y had agreed with N that they'd be paid to Pi instead. Pi says it assumes this was to prevent the fees going to N's administration. I've thought about this carefully, but I can't ignore the fact that the client agreement with Pi said 4% of the money transferred into the SIPP was an "*Agreed Fee*" for Pi and this then was paid to Pi. And, as set out above, I'm satisfied this was a fee for the pension advice.

- When asked about its understanding of which business Mr Y was acting as, the SIPP provider said.

  In May 2017, [Mr Y] *advised us that he was intending switching his members from* [T] *to Future Wealth Management Ltd (Future). At the time he had two firms:*

  - [T]*, an FCA authorised appointed representative of* [N]
  - *Future, an FCA authorised appointed representative of Pi Financial Ltd*

  He advised that he only wanted to work with the Pi Financial network going forward.

  Therefore, all invoices from either [T] *or* [F] *requested payment to be made to Pi Financial…*

  We did not have any contact with Pi Financial at the time, as the FCA register clearly showed Future as their appointed representatives and we had no reason to suggest there was anything untoward.

  In answer to the question of why its records refer to Mr Y representing T after this point, it said:

  The issue at the time is that we were still going through our due diligence process with Future Wealth Management Ltd, which does take some time, and did not yet have them set up on [our] *system. Therefore,* [Mr Y] *was introducing members under* [T]*, which he was authorised to do, in the knowledge that, in the time between us setting up the SIPP and receiving the funds into the account when fees and charges become due, we would have Future Wealth Management set up and we could pay the charges to Pi Financial Ltd, as he wanted. In* [Mr A's] *case, it was almost 3 months from when we set up his SIPP to when we received his first funds.*

And it also explained:

> *There was no rush to set up Terms of Business with Future/Pi, as we were still in the early stages of discussions about receiving introductions and* [T's] *permissions were adequate to introduce members into the* [SIPP]. *It would not become necessary to set up TOBs with Future/Pi until we received funds for the members and looked to place investments on their behalf. We requested that the TOBs be set up some time prior to when we eventually received them but due to a mixture of holidays and lack of urgency on* [Mr Y's] *part, we didn't receive signed ToBs from Future Wealth until 7th December 2017, when we also received the first investment instructions for their members. The forms were then passed on to Pi Financial for their signature. We received their signed forms on 18th December 2017 and we added Future Wealth to our system on 19th December 2017*.

I agree with Pi that the letter dated 8 June 2017 was clear that Mr A's relationship with it was prospective and that no responsibility was taken for advice previously given by T. But I also note that that letter referred to a "*discharge process*" once the new client agreement had been signed. It therefore clearly wasn't envisaged that T and Future would provide services concurrently and instead it was intended there'd be a transition from one to the other. I'm satisfied that once the Future client agreement was signed, Mr Y was acting as Future (and therefore for Pi). I therefore don't agree that the only part of the transaction that was completed via Pi was the payment of fees, or that Pi's involvement was purely administrative.

Pi says because terms of business between the SIPP provider and Future weren't signed until 12 December 2017 – after both the pension switch and transfer – the SIPP provider can't have been acting on Future's instructions before 12 December 2017. I don't agree. The SIPP provider had been told in May 2017 that Mr Y would be acting as Future and for Pi moving forward. And its only reasoning for continuing to use T's agency seems to have been that terms of business hadn't yet been agreed with Future and it was still possible to use T's agency. In all the circumstances here, I'm still satisfied that the use of T's agency was purely for administrative purposes and all the parties involved understood that and knew that the SIPP provider was really acting on Future's instructions.

Pi also says that Mr Y knew he couldn't use the DFM used here when completing business via Future. It says this further points to the fact he completed the business via T. But having told Mr A he'd be representing Future moving forward, I would have then expected him to explain that things would be different for the DFM recommendation if that was his intention. And there's no evidence that was done.

As I set out in my provisional decision, I accept the SIPP certificate of membership and the paperwork for the DFM refer to Mr Y acting on behalf of T. And I note they're contemporaneous documents. But taking everything into account and given my findings above, I'm still not persuaded these were a true reflection of what was happening, and I don't think they can be relied on.

Instead, I find it much more likely that from 12 June 2017, Mr Y was acting as Future, and therefore for Pi, and simply using his other agency that still existed for administrative purposes to get the business through the SIPP operator because Future/Pi wasn't set up with it yet. Both Mr A and the SIPP provider had been told, in May 2017 and June 2017 respectively, that Mr Y would be acting as Future and for Pi moving forward and nothing that happened after persuades me that was no longer the case.

I've therefore gone on to consider whether Pi accepted responsibility for the acts complained about under the appointed representative agreement it had with Future.

The appointed representative agreement

Pi has provided two appointed representative agreements between itself and Future. I note that the relevant content is almost identical, but I've quoted the one dated 15 January 2015 in this decision as that's the most recent and so is closer in time to the events complained about here.

Some relevant sections of the agreement include:

> *2.1 The Company appoints the Appointed Representative to provide Services for the Company on the terms set out in this Agreement and the Appointed Representative accepts such terms, with effect from 15th January 2015.*
>
> *2.2 The Company may at any time prohibit, restrict, add to or otherwise change the Services by notification In Writing to the Appointed Representative, and will use its reasonable endeavours to give at least 14 days notice of any change…*
>
> *4.2 The Appointed Representative shall, when performing his obligations under the terms of this Agreement comply with…*
> *4.2.4 the Company's instructions in Writing from time to time, including the provision of any compliance or procedure manual issued by the Company.*

"*Services*" was defined as:

> *any Regulated Activity which the Company is authorised to undertake from time to time notified by it to the Appointed Representative and also giving advice, making arrangements (or offering or agreeing to do either) in relation to term assurance, mortgages, tax planning, long term care products and any other product offered in the giving of financial advice pursuant to this Agreement.*

So, the appointed representative agreement allowed Future (and therefore Mr Y) to carry out all the activities Mr A has complained about in theory, subject to compliance with any "*instructions in Writing*" given by Pi.

Pi says a "*due diligence*" requirement would have been repeated to Mr Y numerous times. It's shared "*Compliance Bulletin 3/17*" which included the below item:

> ***Due diligence***
>
> *We have had a few instances recently where advisers are recommending products or using providers without the required due diligence being completed. This is a breach of our systems and processes, and leaves both the adviser and pi financial open to scrutiny from both the FCA and PII.*
>
> *We have outlined the process for this situation many times but, as a reminder:*
>
> - *If you are considering the use of a provider who you have not used before you <u>must</u> contact the compliance department in the first instance to find out if due diligence has been carried out previously and if we have a relationship in place with them.*

- *If we do not have a relationship with them, due diligence will be carried out by compliance. You must not recommend their use until compliance have confirmed that all due diligence has been completed satisfactorily.*

It's provided internal records that show this bulletin was issued to Mr Y on 22 June 2017 and that he passed a test on it with 90% on 6 July 2017. It's also provided certificates of attendance at briefings where it says the need for fund approval was discussed. As well as a separate test Mr Y took where a question related to the requirement for Pi to carry out due diligence on alternative investments.

Pi says that even if Mr Y was acting for it at the time of the acts complained about, he didn't get approval from it and so it's not responsible. It's also provided a rejection notice dated 5 October 2017 for the DFM used by Mr A. It says this would have been sent to all advisers – including Mr Y. This set out a number of issues with the DFM and concluded:

> *The Firm believes the issues above provide too much risk to the client, adviser and Firm to provide PI cover and compliance support on any recommendations.*
>
> *No new business can be introduced to* [the DFM].

I haven't been provided with evidence that Mr Y was issued with a copy of that notice of rejection. But even if he was, I'm satisfied it wouldn't affect my conclusion.

I accept that the *Anderson v Sense Network* case established that a principal can restrict the permission it gives to an appointed representative. But as I explained in my provisional decision, in the case of *TenetConnect v Financial Ombudsman Service* [2018] EWHC 459 (Admin), Mr Justice Ouseley said:

> *Of course, the FSMA draws a clear distinction between regulated and unregulated activities. But that does not answer the question of what activities amount to regulated activities where a single braided stream of advice is given to a client about regulated and unregulated investments. Paragraph 53 of the 2001 Order deals with advising as a specified kind of activity, it is a regulated activity when "advising" in relation to a specified investment on the merits of an investor or potential investor selling a relevant investment. Rule 2.3.1 of DISP2 provides that a complaint can be considered if it "relates to an act or omission by a firm carrying on one or more of the following activities." "Carrying on an activity" includes offering or providing or failing to provide a service in relation to an activity. That language does not permit a bright line to be drawn between advice on selling the regulated investment and buying the unregulated investment, where the purpose of the sale is to enable a purchase. The advice on such a sale is inextricably linked to the advice on the purchase. A bright line, one side of which is regulated and on the other side of which is unregulated, would only reflect the facts of the situation where the regulated and unregulated activities were themselves brightly divided. But their edges may be blurred; or they may be inextricably linked. The law governing the Ombudsman's jurisdiction could not force facts into unrealistic compartmentalisation without undermining its purpose and effectiveness…*
>
> [Counsel for the principal] *was concerned at the description of buying and selling as "intrinsically linked". On these facts, that is a fair characterisation of the relationship, but it cannot be a sound general description of every relationship between selling and buying investments. I do not think that the Ombudsman's description of the advice to buy or the "purchase" transactions themselves as "ancillary" to the advice to sell is accurate. Neither aspect of the advice was in reality ancillary here; both were the significant components of the single stream of advice; the regulated advice was*

motivated by the proposals for unregulated investment. The FSMA intended that regulated activity, and the Ombudsman's jurisdiction should be part of a financial service consumer's protection. The legislative provisions should be construed so that, if part of what is done as a single activity is regulated, the whole is regulated rather than the other way round. Otherwise, the regulated part loses the protection which the FSMA requires that it should have. If, to accord that protection, aspects which by themselves would not be regulated are brought into the protective scope of regulation and the Ombudsman's jurisdiction, those giving advice will have to make sure that their regulated and unregulated activities are separated, rather than using the unregulated to escape the consequences of intermingling them with the regulated.

So, if one component activity of advice is regulated and another is unregulated, the effect of FSMA is that the whole advice is regulated.

Here, arrangements were made for a SIPP to be set up for Mr A and his pensions transferred to that SIPP so a relationship could be set up with a DFM. I haven't been provided with anything that suggests Mr Y wasn't allowed to carry out regulated activities in relation to the SIPP or Mr A's previous pensions. So, I'm still satisfied the activities he carried out in relation to those products fell within the actual authority of Future. So even if one component activity in the advice (the DFM recommendation) was unauthorised – as Pi says it was and as *Anderson v Sense Network* made clear was allowed – I haven't seen anything that suggests the remainder was. And therefore, the DFM recommendation was done in the course of business for which Pi accepted responsibility.

Pi says the reasoning of *TenetConnect v Financial Ombudsman Service* applies to regulated and unregulated activities and there's no basis for saying it applies to the acceptance of responsibility by a principal. But I don't agree. In *TenetConnect v Financial Ombudsman Service*, Mr Justice Ouseley went on to say:

In my judgment, the same analysis which persuaded the Ombudsman and me that the activities were so closely linked that they amounted to "regulated" activities, impels the conclusion that they come within s39(3).

And in the earlier case of *Martin v Britannia* [1999] EWHC 852 (Ch), Mr Justice Parker held that:

In my judgment, advice as to the "merits" of buying or surrendering an "investment" cannot be sensibly be treated as confined to a consideration of the advantages or disadvantages of a particular "investment" as a product, without reference to the wider financial context in which the advice is tendered…In my judgment it is neither appropriate in the context of the 1986 Act, nor for that matter would it be realistic, to seek to limit the concept of "investment advice" by reference to the extent to which the advice relates to the "merits" (i.e. to the advantages or disadvantages) of a particular "investment" as defined; and if that be accepted, it seems to me that it must follow that the concept of "investment advice" will comprehend all financial advice given to a prospective client with a view to or in connection with the purchase, sale or surrender of an "investment", including advice as to any associated or ancillary transaction notwithstanding that such transaction may not fall within the definition of "investment business" for the purposes of the 1986 Act.

I'm therefore still satisfied the same reasoning applies to responsibility under Section 39 FSMA.

For the reasons set out above, my decision is that this is a complaint that we can look at.

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.

Because my decision is the same as my provisional decision, I've repeated my provisional findings below with my findings on Pi's additional points added.

The FCA Handbook contains eleven Principles for businesses which are fundamental obligations firms must adhere to (PRIN 1.1.2 R). These include:

- Principle 2, which requires a firm to conduct its business with due skill, care and diligence.
- Principle 3, which requires a firm to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
- Principle 6, which requires a firm to pay due regard to the interests of its customers.
- Principle 7, which requires a firm to pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.

So, the Principles are relevant and form part of the regulatory framework that existed at the relevant time. They must always be complied with by regulated firms like Pi. As such, I need to have regard to them in deciding Mr A's complaint.

Further, COBS 2.1.1 R requires a firm to act honestly, fairly and professionally in accordance with the best interests of its clients in relation to designated investment business carried on for a retail client. The definition of "*designated investment business*" includes "*arranging (bringing about) deals in investments*".

Pi says Future wasn't obliged to revisit the advice given by T and ensure its suitability. But I'm still satisfied that in the circumstances here, Future was obliged to give advice on the arrangement as a whole and did give advice on the DFM. It was therefore obliged to ensure the transfer, switch and DFM were suitable.

Pi says that no advisor is under a duty to ensure suitability and that advice is suitable unless it's so unsuitable that no reasonable advisor could have given it. COBS 19.1.6 sets out that:

> *When advising a retail client who is, or is eligible to be, a member of a defined benefits occupational pension scheme or other scheme with safeguarded benefits whether to transfer, convert or opt-out, a firm should start by assuming that a transfer, conversion or opt-out will not be suitable. A firm should only then consider a transfer, conversion or opt-out to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer, conversion or opt-out is in the client's best interests.*

Although Mr Y didn't provide advice on the pension transfer as Future, I'm satisfied the starting presumption is still the same for ensuring suitability – that a transfer of a defined benefit pension is unsuitable unless there's clear evidence it was in the client's best interests.

At the time of the advice, Mr A was 59 and married with four children. His recollection from the time is that a family friend recommended he had his pensions reviewed. He was referred to Mr Y who said he'd carry out a free review. Mr A has told us:

> *The only reason I decided to have a review was to ensure that my pension was working for me. I knew very little about pensions and having not had any other investments I was ultimately reliant upon the information and advice provided to me by* [Mr Y]. *In my discussions with* [Mr Y] *(19/5/2017) we looked at the projections from existing workplace pensions and what* [Mr Y] *stated was that he could achieve on a conservative basis 2% above the existing plan.* [Mr Y] *then highlighted various benefits such as accessing tax free cash, however declaring this could only be done if I transferred out of the scheme*.

Mr Y noted the attitude to risk questionnaire Mr A filled in had recorded his attitude to risk as "*highest medium*". The advice report that Mr Y produced focussed on the defined benefit pension, simply saying of the defined contribution pension "*You hold a money purchase scheme that you wish to transfer with your* [defined benefit pension] *for consolidation*". In relation to the defined benefit pension, the report included the below:

> *You have contacted us as you are currently a deferred member of the* [defined benefit pension scheme]*. You have confirmed to us that the benefits provided by such a scheme are not your main priorities for retirement. You have stated that your main goal is to access your tax free to provide your 4 children with £20k each. Death benefits are also a primary concern for you as you have had* [health issues] *and wish to secure the fund. You have a pension with you* [sic] *current employer that is worth £350k that you will continue paying into and draw an income from when you retire…*
>
> *It needs to be stressed that most often it is not in someone's best interest to transfer their benefits out of such a scheme, and the most common advice is to leave the benefits where they are.*
>
> *However, this may not be the case if the potential benefits that could be paid in the future do not suit your specific objectives or preferences which may be better suited to an alternative type of arrangement.*
>
> *You have specifically confirmed that you would prefer to access the new pension freedoms when you retire and take your benefits. The ability to take a lump sum and as much income as you need whenever you need it is far more important to you than the regular guaranteed income provided by a DB scheme…*
>
> *I do stress that if you were to transfer this pension to the proposed SIPP, it would need to return over 50% per annum each year until retirement to provide a fund in retirement sufficient to purchase an annuity equal to the benefits provided by the* [defined benefit] *pension scheme at age 60. If this is not the case then the amount you receive when you take your pension could turn out to be less than the amount projected by the* [defined benefit] *pension scheme. Although a defined pension is obviously an important potential benefit it should still be balanced with your overall objectives.*
>
> *You need to be aware that if this is the case, you may not receive as high an income in retirement as you would have if you left the value in your existing arrangements.*
>
> *As such, there may be a disadvantage to transferring the pension from this perspective as it depends on investment performance. You are moving your pension monies from a DB scheme where you do not bear the investment risk, to one that*

you do. It could also be said that if you achieve a higher growth rate it could result in a higher pension but this is not guaranteed…

Based upon the historic and expected returns from an investment portfolio matching your attitude to risk of 7 out of 10, I must stress that it is highly unlikely that you will achieve a return of over 50% per annum every year until retirement. If your intention was solely to match, or improve, the pension income on offer from your final salary scheme and your intention was to purchase an annuity to provide a fixed and guaranteed level of income at retirement, then you should not proceed with this transfer…

However, as you have stated that the existing scheme does not match your objectives, there are other reasons for considering the transfer, as detailed earlier in the report…

It is vital to stress though that if the assumptions above are not achieved you could have far less pension in comparison to your DB scheme, so this needs to be viewed in line with your attitude to risk. You could be worse off if this occurred…

You have stated that as you will not be dependent on this pension as your sole means of retirement, your main priority is to access the new pension freedoms.

Your lifestyle in retirement would be better suited to taking income when you need and as often as you like.

This contrasts to the benefits of the Defined Benefit Scheme which, when taken, provides the same income (increased by inflation) throughout your life and then 66.67% to your surviving spouse. You are more concerned about securing the fund value in total for your dependents.

You much prefer the situation whereby you can take as much income as you need each year and that this flexibility can continue for your spouse and family once you are deceased.

You are fully aware that you can erode the pension down to nothing if you take too much income but are prepared to take the risks. More importantly, I have confirmed you can afford to take those risks.

In relation to both of Mr A's existing pensions, the projected fund comparisons to a SIPP with a DFM arrangement showed that under all assumed growth scenarios Mr A would be significantly worse off by age 65 if he transferred away from his existing pensions. One of the factors in this was that the initial and ongoing charges associated with the SIPP and DFM were significantly higher than what Mr A had with his existing pensions.

In these circumstances, and particularly considering one of the pensions was a defined benefit pension, there would have to be a strong and persuasive reason to ignore that and move to a SIPP anyway.

The advice report emphasised Mr A's desire to take tax-free cash to give to his children – and Mr A then did this. However, Mr A has said this wasn't an initial motive for him in seeking pension advice or what prompted him to have a pension review. I find Mr A's evidence on this point persuasive. And like the investigator, I note that he could have taken tax-free cash from his defined contribution pension at that time. And he wouldn't have needed to have waited much longer to have also been able to take tax-free cash from his defined benefit pension. I'm therefore not persuaded the ability to take tax-free cash made the move to a SIPP suitable.

I also note that the investments Mr A ended up with in his SIPP through the DFM were unregulated with many risk factors.

Taking everything into account, I'm satisfied that Mr A moving away from his existing pensions to a SIPP to use a DFM wasn't in his best interests and Future should have advised Mr A of that.

Pi has said that by the time the client agreement with Future was signed on 12 June 2017, all of the actions with a "*causative potency*" had been completed. But although Mr A may have initially made his decision based on T's advice, I'm satisfied that if Future had done what it should have and had advised Mr A that moving his pensions to a SIPP to use a DFM wasn't in his best interests, it's most likely Mr A would have listened to that. There's nothing that makes me think Mr A was so wedded to the initial advice that he would have refused to listen to advice to the contrary.

Pi has commented on T's responsibility for what happened and says responsibility must attach to T for the fact Mr Y was using his agency with it. It says my decision accepts that no liability should attach to T despite its agency being used for advice and administrative tasks. But this decision is about Pi's responsibility. And because I'm satisfied Mr A wouldn't have moved his pensions to a SIPP to use a DFM if Future had done what it should have done, I think it's fair to ask Pi to compensate Mr A for the full measure of the loss he suffered from moving his pensions and using a DFM.

The DISP rules set out that when an ombudsman's determination includes a money award, then that money award may be such amount as the ombudsman considers to be fair compensation for financial loss, whether or not a court would award compensation (DISP 3.7.2R). Another business may have given Mr A advice, but Pi had its own distinct regulatory obligations which, if met, I'm satisfied would have resulted in the pension moves to the SIPP not taking place.

In making these findings, I take account of the potential contribution made by other parties to the losses suffered by Mr A. In my view, in considering what fair compensation looks like in this case, it's reasonable to make an award against Pi that requires it to compensate Mr A for the full measure of his loss. But for Pi's failings, Mr A's pension moves wouldn't have occurred in the first place.

I'm not asking Pi to account for loss that goes beyond the consequences of its failings. I'm satisfied those failings have caused the full extent of the loss in question. That another party might also be responsible for that same loss is a distinct matter, which I'm not able to determine as it's not a complaint I'm considering here. However, that fact shouldn't impact on Mr A's right to compensation from Pi for the full amount of his loss.

Putting things right

My aim is that Mr A should be put as closely as possible into the position he would probably now be in if everything had happened as it should have. I take the view that Mr A wouldn't have moved his pensions. I'm satisfied that what I've set out below is fair and reasonable.

In summary, Pi should:

1. Calculate the loss Mr A has suffered as a result of making the defined contribution pension switch and investments.

2. Calculate the loss Mr A has suffered as a result of making the defined benefit pension transfer and investments.

3. Take ownership of the investments held in the SIPP if possible.

4. Pay compensation for the loss into Mr A's pension in respect of his pension loss. If that isn't possible, pay compensation for the loss to Mr A direct. In either case, the payment should take into account necessary adjustments set out below.

5. Pay Mr A's SIPP fees for the next five years, in the event he's not now able to close his SIPP.

6. Pay compensation of £500 for the trouble and upset caused to Mr A.

7. Pay interest on the above if fair compensation isn't paid within 90 days of notification of acceptance by Mr A.

I'll explain how Pi should carry out the calculation set out above in further detail below:

1. Calculate the loss Mr A has suffered as a result of making the defined contribution pension switch and investments.

To do this, Pi should work out the likely value of Mr A's defined contribution pension as at the date of this decision, had he left it where it was instead of switching to the SIPP.

Pi should ask Mr A's former pension provider to calculate the current notional transfer value had he not switched his pension. If there are any difficulties in obtaining a notional valuation, then a benchmark of 50% of the FTSE UK Private Investors Income Total Return Index and 50% of the monthly average rate for one-year fixed-rate bonds as published by the Bank of England should be used to calculate the value. That is likely to be a reasonable proxy for the type of return that could have been achieved if the pension hadn't been switched.

The notional transfer value should be compared to the proportion of the transfer value of the SIPP that relates to this pension at the date of this decision and this will show the loss Mr A has suffered.

Any additional sum that Mr A paid into the SIPP should be added to the notional transfer value calculation at the point it was actually paid in.

Any withdrawal, income or other distributions paid out of 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 Pi totals all those payments and deducts that figure at the end. The £80,000 that was subject to a drawdown on 12 October 2017 was from this pension as the defined contribution pension hadn't been transferred into the SIPP at that point. Whereas the £57,511.62 that was subject to a drawdown on 30 October 2019 will need to be assigned proportionately between the two pensions.

2. Calculate the loss Mr A has suffered as a result of making the defined benefit pension transfer and investments.

On 2 August 2022, the FCA launched a consultation on new defined benefit transfer redress guidance and has set out its proposals in a consultation document – CP22/15-calculating redress for non-compliant pension transfer advice**.** The consultation closed on 27 September 2022 with any changes expected to be implemented in early 2023.

In this consultation, the FCA said that it considers that the current redress methodology in Finalised Guidance (FG) 17/19 (Guidance for firms on how to calculate redress for unsuitable defined benefit pension transfers) remains appropriate and fundamental changes aren't necessary. However, its review has identified some areas where the FCA considers it could improve or clarify the methodology to ensure it continues to provide appropriate redress.

The FCA has said it expects firms to continue to calculate and offer compensation to their customers using the existing guidance in FG 17/9 whilst the consultation takes place. But until changes take effect, firms should give customers the option of waiting for their compensation to be calculated in line with any new rules and guidance that may come into force after the consultation has concluded.

We asked Mr A whether he preferred for any redress to be calculated now in line with current guidance or to wait for any new guidance/rules to be published. He's chosen not to wait for any new guidance to come into effect to settle his complaint.

I'm satisfied that a calculation in line with FG 17/9 remains appropriate and, if a loss is identified, will provide fair redress for Mr A.

So to calculate the loss Mr A has suffered as a result of making the defined benefit pension transfer and investments, Pi must undertake a redress calculation in line with the regulator's pension review guidance as updated by the FCA in its Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers. As noted above, the £57,511.62 that was subject to a drawdown on 30 October 2019 will need to be assigned proportionately between the two pensions. And the transfer value assigned to the SIPP will need to be the proportion that relates to this pension.

This calculation should be carried out as at the date of my final decision, and using the most recent financial assumptions at the date of that decision. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr A's acceptance of the decision.

Pi may wish to contact the Department for Work and Pensions (DWP) to obtain Mr A's contribution history to the State Earnings Related Pension Scheme (SERPS or S2P).

These details should then be used to include a 'SERPS adjustment' in the calculation, which will take into account the impact of leaving the occupational scheme on Mr A's SERPS/S2P entitlement.

If the complaint hasn't been settled in full and final settlement by the time any new guidance or rules come into effect, I'd expect Pi to carry out a calculation in line with the updated rules and/or guidance in any event.

3. Take ownership of the investments

Ideally, the assets in the SIPP – the investments – could be removed from the SIPP. Mr A would then be able to close the SIPP, if he wishes, and avoid paying further fees for the SIPP. For calculating compensation, Pi should agree an amount with the SIPP provider as a commercial value for the investments. It should then pay the sum agreed plus any costs and take ownership of them.

If Pi is able to purchase the investments, then the prices paid should be allowed for in the current transfer value (because they'll have been paid into the SIPP to secure the investments).

If Pi is unable, or if there are any difficulties in buying the investments, it should give them a nil value for the purposes of calculating compensation. Provided Mr A is compensated in full, Pi may ask Mr A to provide an undertaking to account to it for the net amount of any payment the SIPP might receive from the investments. That undertaking should allow for the effect of any tax and charges on the amount Mr A may receive from the investments and any eventual sums he'd be able to access from the SIPP. Pi will need to meet any costs in drawing up the undertaking.

4. Pay compensation to Mr A for the loss he's suffered in (1) and (2)

Since the loss Mr A has suffered is within his pension, it's right that I try to restore the value of his pension provision if that's possible. So if possible, the compensation for the loss should be paid into Mr A's pension plan. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance. Payment into the pension should allow for the effect of charges and any available tax relief. This may mean the compensation should be increased to cover the charges and reduced to notionally allow for the income tax relief Mr A could claim. The notional allowance should be calculated using Mr A's marginal rate of tax.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr A as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to his likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

5. SIPP fees

If Mr A is unable to close his SIPP once compensation has been paid, Pi should pay an amount into the SIPP equivalent to five years' worth of the fees (based on the most recent year's fees) that will be payable on the SIPP. I say this because Mr A would not be in the SIPP but for the unsuitable advice. So it wouldn't be fair for him to have to pay the fees to keep it open. And I'm satisfied five years will allow sufficient time for things to be sorted out with the investments and the SIPP to be closed.

6. Trouble and upset

Pay Mr A £500 for trouble and upset caused. I'm satisfied Mr A has been caused significant upset by the events this complaint relates to, and the loss of, in effect, all his pension fund. I think that a payment of £500 is fair to compensate for that upset.

7. Pay interest

The compensation amount must, where possible, be paid to Mr A within 90 days of the date Pi receives notification of his acceptance of my final decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement for any time, in excess of 90 days, that it takes Pi to pay Mr A.

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

It's possible that data gathering for a SERPS adjustment may mean that the actual time taken to settle goes beyond the 90 day period allowed for settlement above – and so any period of time where the only outstanding item required to undertake the calculation is data from DWP may be added to the 90 day period in which interest won't apply.

My final decision

My decision is that Mr A's complaint against Pi Financial Ltd is in the Financial Ombudsman Service's jurisdiction and should be upheld.

Where I uphold a complaint, I can award fair compensation to be paid by a financial business of up to £160,000, plus any interest and/or costs/interest on costs that I consider appropriate. If I think that fair compensation is more than £160,000, I may recommend that the business pays the balance.

Decision and award: I uphold the complaint. I require Pi Financial Ltd to pay Mr A the compensation amount as set out in the steps above, up to a maximum of £160,000.

Where the compensation amount doesn't exceed £160,000, I require Pi Financial Ltd to pay Mr A any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000, I only require Pi Financial Ltd to pay Mr A any interest as set out above on the sum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I recommend that Pi Financial Ltd pays Mr A the balance. I additionally recommend any interest calculated, as set out above, on this balance to be paid to Mr A.

This recommendation is not part of my decision or award. Pi Financial Ltd doesn't have to do what I recommend. It's unlikely that Mr A can accept my decision and go to court to ask for the balance. Mr A may want to get independent legal advice before deciding whether to accept this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 17 November 2022.

Laura Parker
Ombudsman