

The complaint

Ms T complains an appointed representative of The London Trading Company (UK) Limited (The London Trading Company) gave her unsuitable advice to move from one self-invested personal pension (SIPP) to another to invest in a discretionary portfolio.

What happened

Ms T says in 2017 Mr G of SG Capital Management Limited (SG) advised her to switch her SIPP to another company to invest in a discretionary portfolio. At that time, she was in her early 50s and was unemployed receiving tax credits. She says that other than a £180,000 property, her only asset of value was her pension and she had no investment experience. She now believes the advice she was given wasn't in her best interests.

SG was an appointed representative of The London Trading Company between 20 September 2016 and 1 February 2018. The complaint has therefore been made against The London Trading Company.

I've been provided with a copy of a SG fact find dated 7 November 2017, as well as a Saxo Capital Markets account application form signed on 7 November 2017 which confirmed The London Trading Company as Ms T's investment adviser. The account was to be held in Ms T's new SIPP and The London Trading Company had a power of attorney in place in relation to the account. The Saxo application was made under an introducing broker agreement between The London Trading Company and Saxo.

Mr G sent the SIPP application form and the transfer in form to the new SIPP provider on 20 November 2017. And a discretionary asset management agreement was entered into between SG and Ms T on the same date.

The new SIPP provider emailed Mr G on 5 December 2017 thanking him for the SIPP application and asking some questions, including about Ms T's income. Mr G replied to that email confirming Ms T's income was correct and that everything had been approved at his end.

The SIPP was set up on 21 December 2017. £98,300.91 was received from Ms T's previous SIPP on 12 January 2018 and a further £37.86 on 1 August 2018. £96,826.91 was transferred to the SG Capital Management portfolio on 23 March 2018 and this was then invested. It seems the money was moved to another account on 3 July 2019 but was still invested at that point.

Ms T became concerned about the value of her SIPP and her representative complained to The London Trading Company about the advice it said Mr G had given her. It didn't receive a response, so it brought Ms T's complaint to this service. Around that time – on 9 December 2019 – £17,039.79 was withdrawn from the portfolio. It seems a further withdrawal – this time of £5,506.55 – was made on 18 December 2019. And it then seems all the holdings were sold on 28 February 2020, leaving a cash balance of £66,163.20 as at 28 May 2020.

The London Trading Company said it isn't responsible. It said it hadn't given any advice and had simply acted as an introducing broker and carried out investment management services on a discretionary investment basis. It also said it's not authorised to advise on pension transfers and so Mr G wouldn't have been permitted to carry out a pension transfer under the appointed representative agreement SG had with it.

I issued a decision saying I was satisfied we could consider Ms T's complaint against The London Trading Company. I said that under the appointed representative agreement, SG was authorised to give investment and pension advice and to make arrangements in relation to investments and pensions. Although there was a restriction in relation to pension transfers, I was satisfied this transaction involved a pension switch rather than a pension transfer. And I couldn't see any restrictions relevant to pension switches. So, I said The London Trading Company is responsible for any advice given or arranging done. And I said that even if the regulated activity of advising hadn't happened, the regulated activity of arranging had.

An investigator then issued a view on the merits of the complaint. He was satisfied it was most likely Ms T had been advised and that advice wasn't suitable. So, he recommended she be compensated using an appropriate index.

The London Trading Company didn't respond. The issue has therefore been passed to me for a 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.

In my decision of 19 July 2022, I decided that Ms T's complaint is one the Financial Ombudsman Service can consider, and The London Trading Company is responsible for any advice given or arranging done in the circumstances here. The London Trading Company didn't respond to that decision and my findings haven't changed so I won't repeat them here. This decision therefore is to decide whether Ms T's complaint should be upheld.

In my jurisdiction decision, I didn't need to make a finding on whether or not Mr G advised Ms T to switch her pension to a SIPP because I was satisfied we could consider the complaint even if he didn't. But like the investigator, I'm satisfied it's most likely Mr G did make this recommendation. I say this because:

- The fact find Ms T completed was an SG fact find.
- The "*New SIPP Checklist*" recorded SG as the IFA.
- Given Ms T's circumstances and the fact she wasn't an experienced investor, it seems unlikely to me that she'd have made the decision to switch her pension to invest in a discretionary portfolio without receiving advice.

COBS 9.2.1R sets out the obligations on businesses in assessing the suitability of investments. They're the same things I look at when reaching a decision about whether the advice was suitable. In summary, the business must obtain the necessary information regarding: the consumer's knowledge and experience in the investment field relevant to the advice; their financial situation; and their investment objectives.

When I consider a case where someone has switched their pension funds, I look at their circumstances at the time. Why were they interested in switching? Were those wants or

needs reasonable? And so, should the adviser have recommended the switch? And in circumstances where the switch was made to allow particular investments, as was the case here, I'm satisfied the suitability of those investments must form part of the advice given to the consumer.

Each case is different, but I'd expect the switch and underlying investment to be in Ms T's best interests to make the advice suitable.

As the investigator explained, the portfolio Ms T invested in made regular transactions and had lots of costs including transaction charges and performance fees. This increased the level of returns that would need to be generated simply to stand still. I can't see that Mr G gave her a comparison of her previous arrangement with what he recommended. And there's nothing that suggests there was a clear potential for her to be better off because of his recommendation.

It's clear Ms T wasn't a sophisticated investor and given her age and that she wasn't working, I'm not persuaded she was able to absorb a loss. In her circumstances, the fees were unlikely to be worthwhile. And taking everything into account, I'm not persuaded the advice given here was suitable. Like the investigator, I'm satisfied a simple, low-cost, arrangement would have been suitable advice.

Putting things right

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

I think Ms T would have invested different. It's not possible to say *precisely* what she would have done, but I'm satisfied that what I've set out below is fair and reasonable given Ms T's circumstances and objectives when she invested.

As set out above, all the holdings were sold on 28 February 2020, after the complaint had been made. Like the investigator, I'm satisfied the loss should be calculated on that date using the index set out, and then brought up to date using the same index.

What must The London Trading Company do?

To compensate Ms T fairly, The London Trading Company must:

- Compare the performance of Ms T'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.
- The London Trading Company should add interest as set out below.
- The London Trading Company should pay into Ms T'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 The London Trading Company is unable to pay the total amount into Ms T's pension plan, it should pay that amount direct to her. 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 Ms T won't be able to reclaim any of the reduction after compensation is paid.

- The *notional* allowance should be calculated using Ms T's actual or expected marginal rate of tax at her selected retirement age.
- It's reasonable to assume that Ms T is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Ms T 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 Ms T £200 for the trouble and upset she's been caused by the unsuitable advice. Ms T has explained that this was her only pension provision and taking everything into account, I'm satisfied that the loss of a portion of it would have caused her much upset.

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

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional growth	Additional interest
SIPP	Still exists and liquid	FTSE UK Private Investors Income Total Return Index	Date of investment	28 February 2020	Apply the benchmark to the crystallised loss as at 28 September 2020 until the 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 on 28 February 2020.

Fair value

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

Any withdrawal made 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 The London Trading Company totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

The crystallised loss on 28 February 2020 should then be brought up to date using the same benchmark to establish the current loss.

Why is this remedy suitable?

I've decided on this method of compensation because:

- Ms T 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 Ms T's circumstances and risk attitude.

My final decision

I uphold Ms T's complaint. My decision is that The London Trading Company (UK) Limited should pay the amount calculated as set out above.

The London Trading Company (UK) Limited should provide details of its calculation to Ms T in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms T to accept or reject my decision before 13 October 2022.

Laura Parker
Ombudsman