DRN-3919013

The complaint

Mr B complains that Mr F of Joseph Oliver – Mediacao de Seguros LDA (Joseph Oliver), gave him unsuitable advice to transfer his Clerical Medical personal pension to a Westerby Self Invested Personal Pension (SIPP) and invest these pension funds in unregulated investments.

Those investments have failed and Mr B has suffered a substantial loss to his pension. Mr B believes Joseph Oliver should be held responsible for paying him compensation.

What happened

Mr B was a member of a Clerical Medical personal pension with a fund value of around £100,000. He says that he was advised by Mr F to transfer this pension to a Westerby SIPP in September 2012 in order to invest in two unregulated investments – Swiss Asset Micro Asset Income Fund (SAMAIF) and in the Kijani Commodity Fund (Kijani) via the ePortfolio Solutions platform. The SIPP application was dated 21 September 2012 and the funds from Clerical Medical were transferred in November 2012. Both investments in the SIPP have failed.

Mr F appears to have been connected to two regulated firms over the period 2012-2013. One of the firms was Joseph Oliver. Joseph Oliver, is a firm based in Portugal. At the time of the advice, Joseph Oliver passported into the UK under the Insurance Mediation Directive. This means that Joseph Oliver was an EEA authorised firm permitted to carry out some regulated activities in the UK relating to insurance.

The other firm that Mr F was connected to was Abana Unipessaol LDA (Abana). Abana was also an EEA authorised firm with passported permissions in the UK.

Mr B first complained to Abana about the advice he'd received from Mr F in 2012. In this respect, it's worth noting that M F did give Mr B advice in 2014 about another pension investment in the same unregulated funds. And that advice was given by Mr F whilst representing Abana. Mr B's complaint about the 2014 investment has been dealt with separately by our service and does not form the subject of this complaint. But it is relevant background information.

It appears that when Mr B complained to Abana about the advice he'd received from Mr F in 2012, he was told by Abana that Joseph Oliver was responsible and that he should redirect his complaint to Joseph Oliver.

When Mr B complained to Joseph Oliver, it said it wasn't responsible for the complaint and that it had no record of Mr B ever having been one of its clients. It said that it was probable that Mr B was actually a client of Abana. It also said it was likely that Mr B's Westerby application had been allocated to Joseph Oliver in error – something that had been corrected by a novation agreement signed in 2013 which meant that Abana was responsible for all liabilities arising acts undertaken by Mr F.

When the complaint was referred to our service, our investigator looked at all the evidence and concluded that Joseph Oliver was responsible for the complaint. He said:

- The evidence showed that Mr F had given advice and made arrangements for the Westerby SIPP and investments.

- Mr F had done this whilst acting for Joseph Oliver.
- There was evidence that Mr F was acting with the actual authority of Joseph Oliver when advising and arranging the pension and investments for Mr B. On that basis Joseph Oliver was responsible for the complaint.
- Joseph Oliver was also vicariously liable for the acts of Mr F.
- Given that he felt that Joseph Oliver was responsible for the complaint, he went on to consider the merits. He concluded that it was fair and reasonable to say that the advice from Mr F was unsuitable and that Joseph Oliver should therefore pay Mr B compensation.

After receiving further jurisdiction submissions from Joseph Oliver about our time limits, the investigator also concluded that Mr B's complaint had been brought in time.

Joseph Oliver disagreed with our investigator's view. It continues to dispute that it is responsible for what's happened and says that Abana is the correct respondent to the complaint. It also says that the investigator has misunderstood the time limit rules. Its latest response can be summarised as follows:

- The complaint is time barred as it was referred to our service more than six months after Joseph Oliver issued its final response.
- The novation agreement between Abana and Westerby shows that Abana assumed all liability for Mr F's business.
- Mr B has consistently said from the outset that he believed that Mr F of *Abana* had given the advice. A compliance investigation by Abana concluded that it took on responsibility for the acts of Mr F in giving pension advice. Abana also held all Mr F's records which also indicated that Mr F was working for Abana and not Joseph Oliver at the time.
- Mr F was only an "introducer" to Joseph Oliver between May 2012 and October 2012. And in October 2012 everyone (including Abana's director) was told that Joseph Oliver would be wound up. Contrary to the investigator's findings, it was not purporting to embark on new business in October 2012.
- The correspondence "from" Joseph Oliver with Westerby and the intermediary terms of business agreement that the investigator had relied on were not signed by a managing director of Joseph Oliver. They were created by a Mr G - someone who had no authority to bind Joseph Oliver.
- Joseph Oliver had no relationship with Westerby and received no commission. Westerby hadn't checked that Mr F was authorised by Joseph Oliver to give pension advice or otherwise act on its behalf.
- Joseph Oliver had no agency agreement with e-Portfolio Solutions.
- The application forms for the SIPP and investment do not have Joseph Oliver's full details and instead carried payment details for Mr F directly.
- The investigator had concluded that Mr F was not an appointed representative of Joseph Oliver because of the nature of the contract between the parties. But the investigator went on to conclude that Mr F was an agent. Those two findings were not consistent. Joseph Oliver said the Mr F was neither an appointed representative nor agent.
- Mr F had not acted honestly or in Joseph Oliver's best interests – this negated any possible finding of actual authority.

My findings on jurisdiction

Was the complaint made too late?

Our ability to consider complaints is set out in Chapter 2 (DISP 2) of the Financial Conduct Authority's (FCA's) Handbook of Rules and Guidance.

DISP 2.8.2R says:

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

> *(1)* more than six *months* after the date on which the *respondent* sent the complainant its *final response* or *redress determination* or *summary resolution communication*; or
>
> *(2) more than:*
>
> > *(a) six years after the event complained of; or (if later)*
> >
> > *(b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint;*
> >
> > *unless the complainant referred the complaint to the respondent or the Ombudsman within that period and has a written acknowledgement or some other record of the complaint having been received;*
>
> *unless:*
>
> *(3) in the view of the Ombudsman, the failure to comply with the time limits…was as a result of exceptional circumstances.*

Joseph Oliver says that Mr B referred his complaint to us too late based on 2.8.2R (1). It says it wrote to Mr B on 13 September 2016 explaining why it was not responsible for the advice Mr B had received – i.e. after its final response. And Mr B referred his complaint to us on 15 May 2017, which was more than six months after Joseph Oliver's letter of 13 September 2016.

However, I don't agree that the complaint was made more than six months after a final response. That's because the letter issued to Mr B on 13 September 2016 did not meet the requirements under DISP. DISP 1.6.2R defines a final response as follows:

DISP 1.6.2R defines a final response as follows:

> *(1) a 'final response', being a written response from the respondent which:*
>
> *(a) accepts the complaint and, where appropriate, offers redress or remedial action: or*
>
> *(b) offers redress or remedial action without accepting the complaint: or*
>
> *(c) rejects the complaint and gives reasons for*
>
> *doing so: and which:*
>
> *(d) encloses a copy of the Financial Ombudsman Service's standard explanatory leaflet:*
>
> *(da) provides the website address of the Financial Ombudsman Service:*
>
> *(e) informs the complainant that if he remains dissatisfied with the respondent's response, he may now refer his complaint to the Financial Ombudsman Service: and*
>
> *(f) indicates whether or not the respondent consents to waive the relevant time limits in DISP 2.8.2 R or DISP2.8.7 R (Was the complaint referred to the Financial Ombudsman Service in time?) by including the appropriate wording set out in DISP 1 Annex 3R....*

It's not clear that Joseph Oliver included the leaflet required under paragraph (d) above when it issued the letter dated 13 September 2016. But even if it did, Joseph Oliver certainly did not include the information required at paragraphs (da), (e) and (f). These are all specific requirements in the rules, separate from the requirement to provide our leaflet which Joseph Oliver says it provided. As such, the final response to Mr B did not start the six month time limit. Therefore, my decision is that Mr B did not refer his complaint to us too late under that provision.

<u>Is Joseph Oliver responsible for the complaint?</u>

The relevant DISP rules when considering this question are as follows:

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 2.3.3G says that:

> *complaints about acts or omissions include those in respect of activities for which the firm…is responsible (including business of any appointed representative or agent for which the firm…has accepted responsibility).*

And section 39(3) of the Financial Services and Markets Act 2000 (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.*

Taking this all into account, to decide whether Joseph Oliver is responsible here, there are three issues I need to consider:

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

Looking at each in turn:

What are the specific acts Mrs B has complained about?

Mr B has complained about the advice that he received to switch his Clerical Medical personal pension to a Westerby SIPP and invest his pension fund in unregulated investments, which have not performed as expected and resulted in a loss.

Are those acts regulated activities or ancillary to regulated activities?

The rules and guidance I've set out above mean we need to establish whether the complaint relates to an act or omission which occurred when Mr F was carrying on a regulated activity or an ancillary activity carried on in connection with a regulated activity.

I have considered whether Mr F carried out the regulated activity of giving advice or arranging deals in investments. And I conclude that he more than likely did for essentially the same reasons as our investigator, namely:

- The SIPP application to Westerby notes Mr F as Mr B's adviser and sets out that remuneration for this should be paid to Mr F.
- The ePortfolio application also lists Mr F of Joseph Oliver as Mr B's adviser.
- Mr B has consistently told us that Mr F provided advice. That is reflected in the application documents and I think it's unlikely that Mr B would have undertaken the

pension switch and investments without this course of action being recommended to him.

So, my conclusion is that Mr F advised Mr B to switch his pension to the SIPP and make the unregulated investments. He likely made arrangements for this to happen too. Giving advice and making arrangements for the pension and investments are regulated activities. I am therefore satisfied that regulated activities took place.

Did Joseph Oliver accept responsibility for those acts?

In answering this, I must first establish that Mr F was an appointed representative or agent of Joseph Oliver at the time of the advice in 2012 and conducted the regulated activities in this capacity. After all, Joseph Oliver can only be responsible for acts that its appointed representatives or agents undertook. And this is particularly relevant given that Joseph Oliver says that Mr F was working for Abana and not Joseph Oliver at the time.

Mr F isn't noted on the FCA register as having been an appointed representative of Joseph Oliver at any point. But I'm satisfied that Mr F was working as an appointed representative or agent (I'll come back to this term later) of Joseph Oliver at the time in September 2012 because:

- The ePortfolio application document mentions Joseph Oliver – Abana is not mentioned at all in any of the application documents. I can't see why Mr F would use Joseph Oliver's details on the ePortfolio application documents if he had no connection with that firm at the time. He could have chosen to simply use Abana's details if he worked for or was submitting business for Abana at the time– but he did not.
- Whilst Mr B did initially make his complaint to Abana, I think that's likely the result of some confusion on his part given that he later received further advice from Mr F whilst he definitely was working for Abana.
- Joseph Oliver entered into an agreement with Mr F on 1 July 2012. Mr F is named as the appointed representative and the agreement states that:

  The Company wishes to appoint Mr F to introduce the Company to new prospective clients for the express purpose of forming an ongoing business relationship.

  The version of the agreement we have is unsigned – but I'm satisfied that it likely represents the agreement between the parties. After all, Joseph Oliver doesn't dispute that Mr F had some connection to it (it says he was an introducer) and I expect that this agreement formed some part of the written record of the relationship.
- A recent court case between a director of Joseph Oliver and former director and business partner – Mr G - strongly indicates that Mr F was linked to Joseph Oliver as an adviser and then *moved* to Abana in 2013.
- There was clearly an attempt to novate some business that Mr F had undertaken whilst working for Joseph Oliver to Abana. But the evidence suggests that this was as a result of Mr F moving to Abana at some point in 2013 – probably around May 2013. I say this because a letter from Joseph Oliver to Westerby dated 17 May 2013 says that Mr F had given notice to terminate his agreement. This was after the acts being complained about here in 2012. And this echoes what was said in the court case mentioned above which indicates Mr F moved from Joseph Oliver to Abana.
- Westerby has confirmed that it proceeded with the application on the basis that Mr F was working for Joseph Oliver – not Abana. It may not have conducted checks on this – but I can't see why it would have recorded this business against Joseph Oliver if it wasn't told to do this by either Mr F or Joseph Oliver.

So, having established Mr F's connection with Joseph Oliver in respect of the acts being complained about and that he submitted Mr B's business in that capacity– can it be said that Joseph Oliver accepted responsibility for the advice and arrangements undertaken by Mr F?

As mentioned above, there is a contract between Joseph Oliver and Mr F, but it doesn't clearly set out in writing the business for which Joseph Oliver accepted responsibility. This is a specific requirement under section 39 FSMA. And (although I make no finding on this matter), I don't think it's clear that a principal like Joseph Oliver that has limited insurance permissions in the UK can accept responsibility for pension and investment advice/arrangements *under section 39 FSMA* when it itself is not authorised by the regulator to undertake such acts. So, I don't think, as a matter of contractual interpretation and law, I can conclude that Joseph Oliver accepted responsibility for Mr F's acts under section 39 FSMA.

However, that is not the end of the matter. Like our investigator, I conclude that Joseph Oliver accepted responsibility for Mr F's acts under the common law *agency* principle of actual authority. Agency is where one party (the principal – here Joseph Oliver) allows another party (the agent – here Mr F) to act on its behalf in such a way that affects its legal relationship with third parties. An agent may have actual authority, where the principal has expressly or *impliedly* given its assent to the agent that it may act on its behalf.

I think Joseph Oliver can be said to have impliedly given its actual authority to Mr F to give advice about Mr B's pension switch to Westerby and investments. I say this because on 21 September 2012, a director of Joseph Oliver signed an "intermediaries terms of business" agreement with Westerby. This agreement was for Joseph Oliver to be able to submit business to Westerby on behalf of clients.

Under the heading "Authorisation", the agreement states:

> *"The Intermediary* [Joseph Oliver] *warrant that he/she is suitably authorised by the Financial Service Authority in relation to the sale of the SIPP, and advice on underlying investments where appropriate, and will maintain all authorisations, permissions, authorities, licenses and skills necessary for it to carry out its activities under this contract and will in all aspects comply with all Applicable Laws."*

The agreement does not specifically mention Mr F, but I would not expect it to mention specific agents. However, it does confirm that Joseph Oliver was seeking to provide business to Westerby. And I think this evidences that Joseph Oliver envisaged that it would provide advice in relation to the SIPP and underlying investments when submitting that business. Joseph Oliver appears to have done this despite its FCA permissions being limited to insurance activities - perhaps because it misunderstood the nature of its permissions.

I think it's unlikely to be a coincidence that within seven days of the date of the terms of business, Mr F submitted Mr B's SIPP application to Westerby. It appears that Mr F had gone on to do precisely what the terms of the agreement with Westerby envisaged. I think Joseph Oliver likely informed Mr F of the intermediary agreement having been made. By giving that information to Mr F, even if Joseph Oliver didn't expressly confirm that it authorised Mr F to submit business to Westerby, I think it impliedly gave Mr F authority to, at least, arrange deals in investments.

It is also important to remember that, although it isn't sufficient to hold Joseph Oliver responsible under section 39 FSMA, there was a written agreement in place with Mr F. It doesn't state what Joseph Oliver authorised Mr F to do specifically, but it shows that Joseph Oliver did provide Mr F with some degree of authority. And, given the terms of business with Westerby, I think the authority it gave was in relation to pension and investment advice and arrangements.

I note that Joseph Oliver says that it didn't have terms of business to introduce business with ePortfolio Solutions. However, I don't think that undermines or detracts from anything I've said above.

I also note that Joseph Oliver says that the intermediary agreement and other correspondence with Westerby that is noted in this decision was entered into by someone - Mr G - who had no authority to bind Joseph Oliver and who was in fact the managing director of Abana at the time. It says that Joseph Oliver intended to be wound down in October 2012 and this shows that it wouldn't have entered into a new business relationship with Westerby in 2012 at all. It says it's therefore not right to rely on these documents.

I don't find this argument persuasive. First, I think that, whatever the intention later in October 2012 regarding winding down, it doesn't follow that it would not have entered into terms of business with Westerby earlier in September 2012.

Secondly, I've looked at Companies House records for Joseph Oliver's UK based company – Joseph Oliver Marketing Limited (JOML). It's clear that Mr G was a director of JOML until July 2013. I think it's therefore reasonable to assume that he was still a director or held an equivalent position of authority with Joseph Oliver at the time of the events we're looking at too – even if he was also a director of Abana. The two things are not mutually exclusive.

I also can't see any reason why Mr G would enter intermediary terms of business with Westerby on behalf of Joseph Oliver if in fact he had no connection with that company at the time – why not just enter it on behalf of Abana?

Joseph Oliver says the intermediary terms of business are not valid because the document was not signed by *two* of its directors and has pointed to internal board memoranda that sets out this requirement. But I don't accept that any internal requirements as between Joseph Oliver's directors affects the legal validity of agreements that one director enters into on behalf of that company. Such an agreement is binding on that company even if the company doesn't now see such an agreement as being something that it *should* have agreed to.

I have also considered Joseph Oliver's argument that actual authority here should be negated because, it argues, Mr F acted dishonestly and against Joseph Oliver's best interests. I accept that there are limitations to common law actual authority. But nothing I've seen suggests that Mr F has acted against the interests of Joseph Oliver or dishonestly. As mentioned above, I think Mr F likely did what was envisaged by Joseph Oliver when it entered the intermediary terms of agreement with Westerby. Mr F may have received the commission directly from Westerby – but that doesn't mean he has acted dishonestly. So I'm satisfied that actual authority isn't negated.

So, my conclusion is that Joseph Oliver did accept responsibility for the acts being complained about by way of actual authority. As such, we have jurisdiction to consider the complaint against Joseph Oliver. Given this finding, I haven't gone on to consider whether Joseph Oliver might also be said to have accepted responsibility under the common law principle of vicarious liability.

I've noted that Joseph Oliver has said that Abana agreed to "accept any and all liabilities" arising from work undertaken by Mr F. The terms of the novation have not been provided – I'm not sure who is alleged to have been the parties to such an agreement. But, in any event, I consider such an agreement to be a matter between Joseph Oliver and Abana and it does not impact on our jurisdiction.

As we have jurisdiction to consider the complaint, I've gone on to consider the merits below.

What I've decided – and why - merits

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Neither Mr F nor Joseph Oliver itself was authorised to give pension and investment advice or make arrangements. So the starting point was that Mr F should not have given the advice to Mr B and Joseph Oliver should not have allowed him to do so. And had the advice not been given and arrangements made, then clearly Mr B would not have switched his pension and suffered the loss.

But, over and above this, the advice was inadequate and unsuitable – and I note that Joseph Oliver has not sought to argue otherwise. I've not seen a fact-find covering Mr B's circumstances, nor a record of his objectives for his pension arrangements. I haven't seen a recommendations report. And I haven't seen a comparison of the performance, costs and benefits of his existing pension with Clerical Medical. I think it's likely that none of this was carried out by Mr F.

I've seen no evidence that Mr B was a sophisticated or experienced investor who had the knowledge and capacity to make high risk unregulated investments with a significant portion of his pension provision.

So, overall, the advice was unsuitable and Mr F should not have been told to switch his pension to the SIPP and make the investments in SAMAIF and the Kijani fund.

I've set out above why I do not think that any novation agreement between Joseph Oliver and Abana affects Joseph Oliver's liability in this matter. I am also aware that we have issued a decision in Mr B's separate complaint about Westerby's role in these investments. Although another ombudsman upheld that complaint a few months ago, Mr B did not accept the decision within the requisite timescales. As such, the decision wasn't binding on Westerby and Mr B has not been compensated for his losses. Furthermore, Joseph Oliver's role (and failures) in this matter was separate and distinct from Westeby's as the SIPP operator.

So, taking this all into account, I'm satisfied that my finding here does not contradict with anything set out in the Westerby decision and that it's fair to hold Joseph Oliver responsible for all of Mr F's losses arising from the pension switch and investments.

Putting things right

My aim is that Mr B 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 B would have remained with his previous provider. I am satisfied that what I have set out below is fair and reasonable in this situation.

To compensate Mr B fairly, Joseph Oliver must:

- Compare the performance of Mr B's investment with the notional value if it had remained with the previous provider. If the actual value is greater than the notional value, no compensation is payable. If the notional value is greater than the actual value, there is a loss and compensation is payable.

- Joseph Oliver should also add any interest set out below to the compensation payable.

- Joseph Oliver should pay into Mr B'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 Joseph Oliver is unable to pay the total amount into Mr B'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 B won't be able to reclaim any of the reduction after compensation is paid.

- The *notional* allowance should be calculated using Mr B's actual or expected marginal rate of tax at his selected retirement age.

- It's reasonable to assume that Mr B is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr B 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 B £500 for the trouble and upset caused by the unsuitable advice that he received. He's lost a significant amount of his pension provision and this would have cause him a lot of worry.

Income tax may be payable on any interest paid. If Joseph Oliver deducts income tax from the interest it should tell Mr B how much has been taken off. Joseph Oliver should give Mr B a tax deduction certificate in respect of interest if Mr B 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
Westerby SIPP	Still exists but holds illiquid assets	Notional value from previous provider	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. Joseph Oliver should take ownership of any illiquid assets by paying a commercial value acceptable to the pension provider. The amount Joseph Oliver pays should be included in the actual value before compensation is calculated.

If Joseph Oliver is unable to purchase illiquid assets, their value should be assumed to be nil for the purpose of calculating the *actual value*. Joseph Oliver may require that Mr B provides an undertaking to pay Joseph Oliver 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. Joseph Oliver will need to meet any costs in drawing up the undertaking.

Notional Value

This is the value of Mr B's investment had it remained with the previous provider until the end date. Joseph Oliver should request that the previous provider calculate this value.

Any contributions or withdrawals Mr B has made will need to be taken into account whether the notional value is established by the ceding provider or calculated as set out below.

Any additional sums Mr B paid into the SIPP from outset through until the end date should be added to the notional value calculation from the point in time when they were actually paid in.

Any withdrawals from the SIPP from outset through until the end date should be deducted from the notional value calculation at the point they were actually paid, so that they cease to accrue any return in the calculation from that point on. To be clear this doesn't include SIPP charges or fees.

If there's a large number of regular payments, to keep calculations simpler, I'll accept if Joseph Oliver totals all those payments and deducts that figure at the end to determine the notional value instead of deducting periodically.

If the previous providers are unable to calculate a notional value, Joseph Oliver will need to determine a fair value for Mr B's investment instead, using this benchmark: For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds. The adjustments above also apply to the calculation of a fair value using the benchmark, which is then used instead of the notional value in the calculation of compensation.

The Westerby SIPP only exists because of illiquid assets. In order for the Westerby SIPP to be closed and further fees that are charged to be prevented, those assets need to be removed. I've set out above how this might be achieved by Joseph Oliver taking over the illiquid assets, or this is something that Mr B can discuss with the provider directly. But I don't know how long that will take.

Third parties are involved and we don't have the power to tell them what to do. If Joseph Oliver is unable to purchase the illiquid assets, to provide certainty to all parties I think it's fair that it pays Mr B an upfront lump sum equivalent to five years' worth of wrapper fees (calculated using the fee in the previous year to date). This should provide a reasonable period for the parties to arrange for the Westerby SIPP to be closed.

Why is this remedy suitable?

I've chosen this method of compensation because:

- Mr B wanted capital growth with a small risk to his capital.

- If the previous provider is unable to calculate a notional value, then I consider the measure below is appropriate.

- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to his capital.

- 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's a fair measure for someone who was prepared to take some risk to get a higher return.

- I consider that Mr B's risk profile was in between, in the sense that he was prepared to take a small level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mr B into that position. It does not mean that Mr B would have invested 50% of his money in a fixed rate bond and 50% in some kind of index tracker investment. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr B could have obtained from investments suited to his objective and risk attitude.

My final decision

Where I uphold a complaint, I can award fair compensation to be paid by a financial business of up to £150,000, plus any interest and/or costs/ interest on costs that I think are appropriate. If I think that fair compensation is more than £150,000, I may recommend that the business pays the balance.

Decision and award: I uphold the complaint. I think that fair compensation should be calculated as set out above. My decision is that Joseph Oliver - Mediacao de Seguros LDA should pay Mr B the amount produced by that calculation – up to a maximum of £150,000 plus interest.

Recommendation: If the amount produced by the calculation of fair compensation is more than £150,000, I recommend that Joseph Oliver - Mediacao de Seguros LDA pays Mr B the balance.

This recommendation is not part of my determination or award. Joseph Oliver - Mediacao de Seguros LDA doesn't have to do what I recommend. It's unlikely that Mr B can accept my decision and go to court to ask for the balance. Mr B may want to get independent legal advice before deciding whether to accept this decision.

Joseph Oliver - Mediacao de Seguros LDA should provide details of its calculation to Mr B in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr B either to accept or reject my decision before 21 March 2023.

Abdul Hafez
Ombudsman