DRN-3941793

The complaint

Ms M complains about the acts of Mr Y. She says he gave her unsuitable advice to switch two of her pensions to a self-invested personal pension (SIPP) to be able to invest through a discretionary fund manager (DFM) – SVS Securities PLC (SVS). She says Pi Financial Ltd (Pi) is responsible because Mr Y was with a business that was an appointed representative of it at the relevant time.

What happened

I can see from the Financial Conduct Authority (FCA) register that Mr Y worked for a business called Future Wealth Management Ltd (Future) between 13 May 2015 and 11 October 2018. That business was an appointed representative of Pi between 15 January 2015 and 5 March 2019.

Ms M says she was introduced to someone called Mr G by her sister in September 2017 as her sister had previously been advised by him. She says she and her husband met with Mr G on 29 September 2017 and he advised her to move her pensions to a SIPP to be able to invest through a DFM called SVS.

It doesn't seem as though Ms M received any documentation from Mr G however and instead the documentation providing the advice was sent by Mr Y, specifically a recommendation letter dated 18 December 2017. That recommendation letter was on Future headed paper with Mr Y's name at the bottom and read:

> *It was good to meet with you on 29th September 2017. I am now writing to confirm the content and outcome of our discussions…*
>
> *You will recall you were provided with a copy of my Client Agreement on the 29th September 2017 in which my terms of business and charging structure has been laid out. You instructed me to specifically limit my advice to Pension Planning, specifically setting up a Self-Invested Personal Pension (SIPP) and I have acted accordingly. I have, therefore, only obtained the necessary information from you to advise on the above area. You should be aware that my recommendations may have differed if I had undertaken a full review of your financial circumstances…*
>
> *At the present time, your prime objective is to review your existing pension contracts…and set up a SIPP to provide you with greater investment choice and flexibility in access when you come to retire. You wish to consolidate all of your plans under the one agreement so that you can save on management and administration fees, and so that you can have flexibility in terms of access. You wish to have access to a wider range of investments and the flexibility to change these to reflect your circumstances and your attitude to risk. You also wish to be able to leave your entire fund to your husband in the event of your death and wish your new arrangement to take advantage of new laws that benefit pensions in the future. You have requested that I research the market for a suitable SIPP provider with whom to invest all of your pension monies…*

With regards to the monies that are going to be actively managed on your behalf by SVS Securities you confirmed that you would be comfortable with up to 4-6% loss before you would look at moving any monies or reinvesting in to a different investment plan…

You completed a risk profile questionnaire and you scored 4 out of 10. This puts you as a balanced risk investor. You agreed with this and feel this is a fair reflection of your understanding of financial products and your goals and aspirations…

It was clear, given your requirement to have flexibility in terms of where your pension monies are invested, that a SIPP would be the best vehicle to allow you to do this…

As previously outlined you wish to have your monies managed by an appropriate DFM with whom I will be recommending for you, having researched the market…

As part of my duty of care to you I have considered the proposed portfolio and believe it suitable for you based on your current attitude to risk and capacity for loss…

After due consideration of your attitude to risk, tolerance and capacity we have agreed that the most suitable portfolio for you is within the Income Model Portfolio…

I believe that for you the active portfolio management that SVS Securities charges represent good value…

Our fee structure is detailed in our client agreement which was given to you at your meeting.

- *An initial fee of **3.25%** will be charged to meet the cost of our recommendation…*
- *There is an ongoing **1.00%** charge of funds under management for ongoing service and advice, payable monthly.*

The SIPP was set up on 28 February 2018. It seems that despite the initial plan being for all four of Ms M's personal pensions to be moved to the SIPP, only two actually were. The SIPP statements show:

- £141,189.67 was transferred in from a previous pension on 9 March 2018.
- An adviser fee of £2,117.85 was paid on 12 March 2018.
- £138,557.02 was transferred to SVS on 15 March 2018.
- £94.83 was transferred in from a previous pension on 19 March 2018.
- An adviser fee of £1.42 was paid on 29 March 2018.
- £51,710.22 was received from an investment on 11 January 2022.

SVS went into administration and Ms M complained to Pi after having a claim turned down by the Financial Services Compensation Scheme. Pi didn't uphold the complaint because it said the advice had been given by Mr G, not Mr Y. Although it also had an agreement with Mr G, this was an introducer agreement and it said he wasn't allowed to provide any advice.

It also said Ms M's loss had been incurred because of the mismanagement of her funds by SVS and referenced a FCA supervisory notice relating to SVS dated 2 August 2019.

After an initial view from an investigator that Ms M's complaint should be upheld, Pi provided detailed information from a number of different complaints that it said showed a pattern of behaviour of Mr G holding himself out as an adviser at Future. It said there was a pattern of complainants believing that Mr G was their sole adviser – not Mr Y – and of Mr G now advising people to make complaints about Pi. It said if Mr Y hadn't given any advice or been involved in the switches and investments, as it didn't think he had, we don't have jurisdiction to consider Ms M's complaint against it.

An investigator was satisfied we could consider Ms M's complaint against Pi and that it should be upheld. In summary, she said the evidence suggested Mr Y of Future had given advice and made arrangements and this was something that had been allowed under the appointed representative agreement.

Pi didn't agree. It said a number of "*clients*" in similar circumstances had confirmed they'd never met Mr Y and had only ever dealt with Mr G. It said it therefore appears that Mr G carried out a fraudulent misrepresentation and the Financial Ombudsman Service isn't best placed to consider this, or if it is, an oral hearing is necessary to fairly consider it. I responded explaining why I didn't think oral testimony in the case would provide any additional assistance and turning down the hearing request.

Pi then provided a detailed response to the investigator's view which I've read and considered in full. In summary, it said:

- None of the documentation was signed by Mr Y which is unusual.
- It would have been easy for Mr G to issue a letter to look as though it was issued by Future.
- Ms M has been clear that she only met with and was advised by Mr G. The recommendation letter says the author met Ms M on 29 September 2017 so the letter must have been a fabrication drafted by Mr G.
- Certification of the client identity check was forged to appear as though it was done by Mr Y.
- The loss was caused by Mr G fraudulently giving advice.
- Ms M is not and has never been a client of Pi – there's no past, present or future provision of services to Ms M by Future. And as she's not a customer, she's not an eligible complainant.
- It's clear from Ms M's evidence that Mr G held himself out to be an adviser. There's no evidence that Ms M had any contact with Mr Y, let alone that she received advice from him. Mr G never intended Ms M would get advice from anyone else and he was always intending to carry out business with her under the guise of Future.
- The fact fees were sent to it doesn't show it knew of, and had accepted responsibility for, the acts of its appointed representative – it passively received them. When the first fee was received, it had no prior knowledge of the business, couldn't ask Mr Y as he'd moved abroad and had no knowledge of the involvement of Mr G or what had happened.

- The investigator ignored the underlying principles that whatever an appointed representative does must be lawful otherwise it's automatically excluded from the principal's responsibility. It can't be held liable for fraudulent acts of its appointed representative where they're deliberately concealed from it.

- COBS 10 which the investigator had referred to doesn't apply – it only applies where there's been a direct offer financial promotion which wasn't the case here.

- The investigator assessed the risk profile of SVS with the benefit of hindsight rather than with reference to any material available at the time of the events complained about. Just because it failed not long after the investment was made, doesn't mean it must always have been a greater risk.

- It's Mr G that should be held accountable.

The issue has therefore been passed to me for a decision.

What I've decided – jurisdiction

I've considered all the evidence that's been provided. Having done so, I'm satisfied this complaint is one that the Financial Ombudsman Service has jurisdiction to consider.

To carry out regulated activities a business needs to be authorised (Section 19 of the Financial Services and Markets Act 2000 (FSMA)). Future (and therefore Mr Y) 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 by the judge 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, at paragraph 33:

> *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.

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

- What are the specific acts Ms M 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 Ms M has complained about?

Ms M complains Mr Y gave her unsuitable advice to switch two of her pensions to a SIPP to invest through SVS.

Are those acts regulated activities or ancillary to regulated activities?

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

> *(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). The rights under a personal pension scheme (which includes Ms M's previous pensions and the SIPP she moved to) are specified as investments by a provision in Article 82 RAO. Advising on investments is a specified activity under Article 53 RAO. And making arrangements in relation to them is a specified activity under Article 25 RAO.

Ms M says although she was initially advised by Mr G, she never received any paperwork from Mr G and the advice letter she received came from Mr Y. Pi says Mr Y didn't give advice and it was only Mr G that did.

I've thought carefully about all of the evidence. Taking everything into account, I'm satisfied it's most likely Mr Y advised Ms M to switch her pensions and invest through SVS.

In the circumstances here, there are several things that satisfy me it's most likely Mr Y advised Ms M:

- The recommendation letter dated 18 December 2017 clearly gave advice and I'm satisfied it's most likely Mr Y was aware of the content of this letter and allowed it to be sent in his name, even if he didn't draft it himself. I say this because I've seen emails from Ms M's SIPP provider that were either sent to Mr Y direct, or where he was copied in which make it clear he knew what was happening. Specifically, Mr Y was sent an email on 8 January 2018 thanking him for the SIPP application and requesting some further paperwork before the SIPP could be opened. And he was copied into an email on 28 February 2018 enclosing documentation for the SIPP. He was also sent various communications by Ms M's previous pension providers that he didn't query.

  I note everything Pi has said about the validity of the recommendation letter and the fact it wasn't signed by Mr Y. But taking everything into account, I don't think there's enough to reasonably conclude the recommendation letter was created and sent without Mr Y's knowledge.

- The SIPP application form named Mr Y as Ms M's adviser – giving a Future email address and Pi as the firm name. It was also selected that advice had been given.

- The SIPP operator's "*key facts*" document named Mr Y of Future as Ms M's adviser.

- A risk profile report Ms M signed on 22 December 2017 has Mr Y's name typed in where the adviser's signature should be.

- Fees were paid to Pi. Pi accepts receiving £2,117.85 which it seems was sent on 12 March 2018. And it seems a further £1.42 was sent on 29 March 2018.

Pi says it was Mr G who advised Ms M – and Ms M accepts she received advice from Mr G. But just because Ms M received advice from someone else, that doesn't mean Mr Y didn't also give advice.

I'm also satisfied it's most likely that Mr Y carried out the regulated activity of making arrangements. I say this because in addition to the emails from the SIPP provider referred to above, I've been provided with copies of letters from Ms M's previous pension providers to Future, one with Mr Y as a reference and others sent "*For the attention of* [Mr Y]". Also, Ms M's passport and bank statement seem to have been certified by Mr Y on 9 and 18 January 2018 respectively – although I note that Pi disputes that.

My conclusion therefore is that Mr Y did give advice to Ms M about the SIPP and investments and made arrangements in relation to these so regulated activities took place.

Did Pi accept responsibility for those acts?

Which business was Mr Y acting for?

Taking everything into account, I'm satisfied Mr Y was acting as Future when he advised Ms M and made arrangements. The only mention of any other business is that in the two emails Mr Y was sent, the email address that was used wasn't his Future one and instead was an email address at a different business. But the fact the recommendation letter was sent in his capacity at Future, the application documentation all referred to Future and fees were paid to Pi satisfy me that he was acting as Future when he carried out the acts complained about here. I've therefore gone on to consider whether Pi accepted responsibility under the agreement it had with Future.

The agreement with Future

The appointed representative agreement between Pi and Future says:

> *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.*

"*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.*

And "*Regulated Activity*" was defined as:

> *Any activity requiring authorisation under The Act or by the FCA and "Regulated Activities" means more than one of them.*

The agreement therefore is broad and envisages advice being given on, and arrangements made in relation to, investments. And Pi hasn't disputed that.

Instead, Pi said the underlying principles are that whatever an appointed representative does must be lawful otherwise it's automatically excluded from the principal's responsibility. In particular, it said it can't be held liable for fraudulent acts of its appointed representative where they're deliberately concealed from it. But I'm not persuaded Mr Y acted unlawfully or fraudulently in carrying out the regulated activities of advising Ms M and making arrangements in relation to her specified investments.

So, I'm satisfied that Pi did accept responsibility for Mr Y advising Ms M to switch her pensions and invest through SVS.

My decision – jurisdiction

I don't agree with Pi that Ms M was never its client and therefore isn't an eligible customer. For the reasons set out above, I'm satisfied Pi is responsible under Section 39 FSMA for the acts being complained about and this is a complaint that we can look at.

What I've decided – merits

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

The investigator didn't refer to COBS 10 in her assessment of Ms M's complaint. But I agree with Pi that COBS 10 isn't relevant in the circumstances here and I confirm I haven't taken it into account when considering the merits of the complaint.

As I'm satisfied it's most likely Mr Y advised Ms M to move her pensions to a SIPP to invest through SVS, I've considered whether that advice was suitable. The kind of things I would expect Mr Y to consider when assessing suitability are:

- The likely cost of the proposed arrangement compared to the existing arrangements.

- The level of funds involved.

- Ms M's knowledge and experience.

On Ms M's client fact find signed on 29 September 2017 she was noted to have four personal pensions which we know totalled just under £190,000. Her income was £11,700; and it seems she had little trading experience or investment knowledge. The pensions that were switched made up the bulk of Ms M's personal pensions therefore and it seems she had a low capacity for loss. Ms M says her attitude to risk was low to medium and this is borne out in the documentation I've seen.

Taking everything into account, I'm satisfied Ms M was a low risk, inexperienced, investor and someone for whom traditional low-cost pension arrangements would have been appropriate.

The new arrangement Ms M entered wasn't a low cost or traditional pension arrangement. The SIPP was stated to have a set-up fee of £100 and an annual fee of £199. And the DFM service also had costs – it seems Ms M was charged £3,780.09 by SVS up to 24 July 2020. Additionally, there were the adviser fees – an initial fee of 3.25% and an ongoing fee of 1%.

The letter of 18 December 2017 set out the reasons for recommending the SIPP as being:

> *You wish to consolidate all of your plans under the one agreement so that you can save on management and administration fees, and so that you can have flexibility in terms of access. You wish to have access to a wider range of investments and the flexibility to change these to reflect your circumstances and your attitude to risk. You also wish to be able to leave your entire fund to your husband in the event of your death and wish your new arrangement to take advantage of new laws that benefit pensions in the future.*

But whilst the SIPP may have had some advantages, I haven't seen anything that persuades me these benefits were needed by Ms M in her circumstances. There's no evidence that Ms M – with her modest pension funds – needed access to a wider range of investments or that such funds wouldn't have been available with her previous pensions. And if there was a genuine desire by Ms M to consolidate her pensions into one fund, it seems likely there'd have been cheaper options, such as a stakeholder pension, that would have met her needs. Taking everything into account, I'm satisfied it ought to have been clear to Mr Y that there was no obvious justification for Ms M to move from her existing schemes and enter the arrangement she did. And this assessment is based on knowledge Mr Y ought to have had at the time – not what we now know about the failure of SVS.

In these circumstances I'm satisfied advice to switch Ms M's pensions to a SIPP to invest through SVS should never have been made as a recommendation. I'm satisfied that if Mr Y hadn't given unsuitable advice, Ms M would have left her pensions as they were.

As I've set out above, even if Mr Y didn't advise Ms M, he carried out the regulated activity of making arrangements. In conducting this regulated activity, he had to act in line with the FCA's Principles for Businesses. Of particular relevance here is Principle 6 which says:

> *A firm must pay due regard to the interests of its customers and treat them fairly.*

And COBS 2.1.1R says:

> *A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).*

So, I'm satisfied Mr Y would still have needed to consider whether it was in Ms M's best interests to move her pensions to a SIPP for investment via a DFM. For the same reasons as set out above, I'm not persuaded it was. And if it wasn't Mr Y that advised Ms M, then it seems likely he knew she'd been advised by an unregulated introducer and he should have taken this into account.

Pi has commented on the fact Mr G gave advice. But this decision is about Pi's responsibility. And because I'm satisfied Ms M wouldn't have moved her pensions to a SIPP to make the investments she did if Mr Y hadn't given the unsuitable advice or made the arrangements he did, I think it's fair to ask Pi to compensate Ms M for the full measure of the loss she suffered from moving her pensions and making the investments she did.

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). Someone else may also have given Ms M 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 Ms M. This includes Pi's argument that misadministration by SVS caused Ms M's loss. 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 Ms M for the full measure of her loss. But for Pi's failings, Ms M's pension moves wouldn't have occurred.

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 and that fact shouldn't impact on Ms M's right to compensation from Pi for the full amount of her loss.

Putting things right

In assessing what would be fair compensation, I consider that my aim should be to put Ms M as close to the position she would probably now be in if she had not been given unsuitable advice.

I take the view that Ms M wouldn't have moved her pensions if everything had happened as it should have. I'm satisfied that what I've set out below is fair and reasonable given Ms M's circumstances and objectives at the time.

In summary, Pi should:

1. Calculate the loss Ms M has suffered as a result of making the switches and investing through SVS.
2. Take ownership of the investments held in the SIPP if possible.
3. Pay compensation for the loss into Ms M's pension in respect of her pension losses. If that isn't possible, pay compensation for the loss to Ms M direct. In either case, the payment should take into account necessary adjustments set out below.
4. Pay Ms M's SIPP fees for the next five years, in the event she's now not able to close her SIPP.
5. Pay compensation of £300 for the trouble and upset caused to Ms M.
6. Pay interest on the above if fair compensation isn't paid within 28 days of notification of acceptance by Ms M.

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

1. **Calculate the loss Ms M has suffered as a result of making the switches and investing through SVS**

To do this, Pi should work out the likely value of Ms M's pensions as at the date of my decision, had she left them where they were instead of switching to the SIPP.

Pi should ask Ms M's former pension providers to calculate the current notional transfer values had she not switched her pensions. 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 returns that could have been achieved if the pensions hadn't been switched.

The notional transfer values should be compared to the transfer value of the SIPP at the date of my decision and this will show the loss Ms M has suffered.

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

Any withdrawal, income or other distributions paid out of the SIPP should be deducted proportionately from the fair value calculations 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.

2. ***Take ownership of the investments***

Ideally, the assets in the SIPP – the investments – could be removed from the SIPP. Ms M would then be able to close the SIPP, if she 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 price paid should be allowed for in the current transfer value (because it'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. Pi may then ask Ms M to provide an undertaking to account to it for the net amount of any payment the SIPP might receive from the investments once she's been compensated in full for her losses if Pi chooses to limit compensation to the award limit. That undertaking should allow for the effect of any tax and charges on the amount Ms M may receive from the investments and any eventual sums she'd be able to access from the SIPP. Pi will need to meet any costs in drawing up the undertaking.

3. **Pay compensation to Ms M for the loss she's suffered in (1)**

Since the loss Ms M has suffered is within her pension, it's right that I try to restore the value of her pension provision if that's possible. So, if possible, the compensation for the loss should be paid into Ms M's pension plan if it still exists. The compensation shouldn't be paid into the pension 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 Ms M could claim. The notional allowance should be calculated using Ms M's marginal rate of tax.

If it's not possible to pay the compensation into Ms M's pension, the compensation should be paid to Ms M direct. But had it been possible to pay the compensation into the pension, it would have provided a taxable income. Therefore, the compensation for the loss paid to Ms M should be reduced to notionally allow for any income tax that would otherwise have been paid. The notional allowance should be calculated using Ms M's marginal rate of tax in retirement. For example, if Ms M is likely to be a basic rate taxpayer in retirement, the notional allowance would equate to a reduction in the total amount equivalent to the current basic rate of tax. However, if Ms M would have been able to take a tax-free lump sum, the notional allowance should be applied to 75% of the total amount.

4. SIPP fees

If Ms M is unable to close her 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 Ms M wouldn't be in the SIPP but for the unsuitable advice. So, it wouldn't be fair for her 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.

5. Trouble and upset

Pay Ms M £300 for the trouble and upset caused. I'm satisfied Ms M has been caused significant upset by the events this complaint relates to, and the loss of a significant portion of her pension fund. I think that a payment of £300 is fair to compensate for that upset.

6. Pay interest

Pi should pay fair compensation as set out above within 28 days of being notified that Ms M has accepted my decision. If it doesn't, interest on the compensation due is to be paid from the date of the decision to the date of payment at the rate of 8% simple interest per year. Income tax may be payable on any interest paid. If Pi deducts income tax from the interest, it should tell Ms M how much has been taken off. Pi should give Ms M a tax deduction certificate in respect of interest if Ms M asks for one, so she can reclaim the tax on interest from HM Revenue & Customs if appropriate.

My final decision

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 think are 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 think that fair compensation should be calculated as set out above and Pi Financial Ltd should provide details of its calculation to Ms M in a clear, simple format. My decision is that Pi Financial Ltd should pay Ms M the amount produced by that calculation – up to a maximum of £160,000 plus any interest.

Recommendation: If the amount produced by the calculation of fair compensation is more than £160,000, I recommend that Pi Financial Ltd pays Ms M the balance.

This recommendation is not part of my determination or award. Pi Financial Ltd doesn't have to do what I recommend. It's unlikely that Ms M can accept my decision and go to court to ask for the balance. Ms M 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 Ms M to accept or reject my decision before 11 September 2023.

Laura Parker
Ombudsman