DRN-3985139

The complaint

Mr L says CASLP Ltd is responsible for the negligent operation and management of a commercial property interest held in his Self-invested Personal Pension (SIPP), and that this has caused him financial detriment.

What happened

In 2003 Mr L accepted a recommendation from his financial adviser to switch funds from two personal pensions into a SIPP with CASLP (trading as Merchant Investors). He transferred around £210,000, which was to be invested in two commercial properties in broadly equal amounts. His complaint relates to what happened in relation to one of these properties, which I'll refer to as the retail building.

In March 2004, an application was made to establish a syndicated property fund. Mr L wanted to be a member. The syndicate purchased a retail building freehold for just over £2 million. The minimum investment for syndicate members was said to be £50,000. The maximum was £100,000. Syndicate members could exercise a vote in relation to certain relevant matters, such as the extension or otherwise of the period of investment. And members were bound by majority decision.

At the time the retail building was purchased, the main tenant was a bank. It paid around £123,000 in rent per year and had 13.5 years remaining on its tenancy. Rent reviews were held every five years, with the next due in December 2007. Nearly £1.1 million was available from members of the syndicate (towards the purchase and to provide some liquidity to the scheme). And to complete the transaction, borrowing of £1.3 million was arranged with a financier. The initial investment term was seven years. The purchase of the retail building was completed in August 2004.

Ultimately, Mr L acknowledged his interest in the retail building hadn't been a success. When it was sold for around £860,000 in March 2020, the value of his initial investment of around £100,000 had reduced to around £77,000.

But Mr L thought CASLP's management of his investment had made his position far worse. On 2 December 2020, he complained about what had happened, raising several concerns including:

- That the syndicate had been set up for a seven-year term, but the sale of the property didn't take place until March 2020, and throughout this time fees, charges and expenses continued to be deducted from his fund.

- At the end of the seven-year term syndicate members were strongly advised to extend and warned that penalties would be incurred in the event of a syndicate member choosing to leave. This advice was repeated subsequently.

- Over the period the value of the property fell and the decision was eventually taken to sell. But efforts were unsuccessful because the price sought was too high. There was a lack of information made available to syndicate members throughout the process.

- Despite the property being subject to ‘upward only’ rent reviews every 5 years, no increase in the original rent was ever secured.

- The property was subject to a mortgage which was due to be cleared by expiration of the head lease in 2017, but this didn’t happen. This led to action by the bank initially to force a sale and ultimately the agreement of costly refinancing arrangements.

- Syndicate members were assured as the head lease was coming to an end, the existing tenant would be remaining. But this changed late in the day impacting the prospect of selling the property.

- The issue of dilapidations dealt with at the end of the lease led to further fees, significant delays due to negotiations with the former tenant and loss of rent. The costs were eventually paid by the scheme's funds upfront to enable leases for the sub tenant and the new tenant to be completed. Earlier action would’ve reduced fees and more rent would’ve been received.

- Throughout the life of the syndicate the valuation of the property was far too high. The eventual sale was approximately 40% of the purchase price paid 16 years earlier. Yet fees based on over optimistic valuations were deducted throughout.

- Inflated valuations were also used when some members of the syndicate chose to leave, leading to overly generous transfer values further exacerbating the cost to those who remained to the end.

CASLP rejected Mr L’s complaint on 10 March 2021, responding in the following terms:

“Direct investment by a group of investors in a commercial property is a permitted type of investment in a SIPP. Our records indicate that your syndicated property purchase has been governed and managed in line with the syndicate agreement and rules. Whilst we understand your concerns about the management of your syndicated property purchase, we have followed and adhered to correct governance and processes.”

Mr L approached this Service. An investigator reviewed his case and didn’t uphold most of his complaint points. He noted CASLP hadn’t been involved in advising him on the investment. He thought he’d been aware of many of the risks that materialised with his interest in the retail building, such as a lack of diversification and liquidity. And he considered it had been entitled to rely on the professional services it commissioned, for example in relation to valuations.

But the Investigator did uphold one element of Mr L’s complaint. He thought CASLP was responsible for ensuring the loan on the retail property had been repaid at the point the head lease expired in 2017. But this hadn’t happened.

Neither party agreed with the Investigator. For example, Mr L reiterated that had earlier action been taken to put right the dilapidations through the scheme paying for these upfront, time saved would’ve meant reduced fees and increased rents received. CASLP thought the Investigator’s conclusion suggested it should’ve taken alternative action which would’ve led to worse outcomes for the investors.

As both parties couldn’t agree to the Investigator’s findings and conclusions Mr L’s case was passed to me to review afresh. I issued my provisional decision earlier this month. I’m grateful to both parties for their respective additional submissions. I’ve considered these carefully in arriving at this final decision.

What I’ve decided – and why

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

Where there's conflicting information about what happened and gaps in what we know, my role is to weigh the evidence we do have and to decide, on the balance of probabilities, what's most likely to have happened.

I've not provided a detailed response to all the points raised in this case. That's deliberate; ours is an informal service for resolving disputes between financial businesses and their customers. While I've taken into account all submissions, I've concentrated my findings on what I think is relevant and at the heart of this complaint.

I'm upholding Mr L's complaint. I'll explain why.

The first thing I've considered is the extensive regulation around transactions like those performed by CASLP for Mr L. The FCA Handbook contains eleven Principles for businesses, which it says are fundamental obligations firms must adhere to (PRIN 1.1.2 G in the FCA Handbook). 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 CASLP. As such, I need to have regard to them in deciding Mr L's complaint.

Mr L signed a subscription agreement and risk deed form, as well as a syndicated property agreement, in respect of his investment in the retail building on 31 March 2004. These documents are important because they set out in some detail how the arrangement would work.

For example, there were several parties involved with the retail building Mr L had taken an interest in. These included a fund manager, managing agent and valuer. Other parties such as the tenants of the property and their own professional representatives added further layers.

Such arrangements for commercial properties are not unusual, but it can mean the operation and management of schemes is necessarily more complicated. And maintaining effective communications is sometimes more of a challenge. I think CASLP set out clearly what the respective roles and responsibilities of the key parties would be.

CASLP were responsible for putting in place appropriately qualified professional services. For example, in March 2009 it appointed Attivo Property Limited as managing agent for the retail building. It later changed its name to PHG Property (PHG). It was a member of the Royal Institute of Chartered Surveyors (RICS).

PHG's responsibilities included management of the property; maintenance of the property; maintenance of records and accounts; the collection of rents and other monies due; payment of relevant outgoings; site inspections; conduct of initial rent review appraisals; liaison with tenants and authorities; and marketing the property as required. PHG in turn procured certain specialist services, for example qualified surveyors to conduct rent negotiations and to deliver independent valuations and reports.

I should note that the advice provided by PHG and the professional services it delivered are not regulated in terms of the jurisdiction of this Service. However, CASLP is responsible to the extent it appointed such businesses. It had to do so with due care. Further, while I think it was reasonable for CASLP to rely on the expert opinions it received, I would've expected it to have challenged any poor service or obvious errors in respect of those professional service providers it had contracted with.

I note Mr L's original complaint points related either directly or indirectly to the risks of his investment. For example, the delay in sale of the retail building beyond the initial seven-year term; the falling market value of the asset and the revenue stream it was able to command over time; and issues with securing new tenants.

The agreements Mr L signed in 2004 set out the specific risks he was exposing himself to by investing in the retail building. For example, on the face of the subscription agreement it stated:

"…investment in commercial property involves significant risk, that the fund will be exposed to higher volatility and/or risk than other funds of the company because of a smaller spread of investments and/or greater risks inherent in the actual investments selected and that these risks will be increased if the property is untenanted or if there is gearing."

Further, the fact sheet he saw drew out some of these risks in more detail in relation to future performance; liquidity; members of the syndicate leaving and penalties applying; any future downturn in the UK commercial property market; and changing regulation.

So, I think Mr L knowingly accepted the risks. In setting out his complaint to CASLP he acknowledged the holding hadn't been a success. But he felt that its operation and management of the investment had made things much worse.

A number of Mr L's complaint points relate to services provided by PHG and some of its sub-contractors. For example, the advice to the syndicate not to sell after the initial seven-year period was up, and in subsequent years; the valuations provided for the retail building; the approach to marketing the property; and the workings of the rent reviews.

Taking the example of the recommendation for syndicate members to hold onto their interest in the retail building in 2011, at the point when the initial seven-year term was up. Bearing in mind the purchase price of the property in 2004 had been around £2.1 million, I understand it was put up for sale at £1.85 million. But a decision was taken to withdraw it when it became clear the asking price was significantly above market expectation. It was also established that the rent being secured on the asset was in excess of market rents.

Presumably for the reasons set out, the recommendation from PHG and/or its agents was for members of the syndicate to hold onto their investment. The alternative would've been to have crystalised a capital loss on the retail building and foregone a healthy stream of rental income. Given the prevailing conditions, the case to hold the investment appears reasonable.

Recommendations would've been made to all members of the property syndicate. Mr L had an opportunity to have voted whether to accept that advice, or not. And as provided for by the syndicated property agreement, he'd accepted that he would be bound by the majority decision of members.

I'm not going to set out the position for each and every transaction and decision point between 2004 and the ultimate sale of the property in 2020. Suffice to say that what I've seen in relation to most of these matters doesn't provide sufficient evidence to suggest something was obviously wrong in general with the professional services CASLP had put in place.

I think what Mr L experienced with his investment was the impact of specific events such as the credit crunch in 2008, and other trends such as reduced footfall on the 'high street', which combined to impact on the prospects of the asset he held. These eroded the capital value of the property which reduced from £2.1 million in 2004 to as low as £1.2 million in 2017. Further, the sale in 2020 only realised around £0.9 million.

I've considered various other aspects of Mr L's complaint and I find that there is merit in some of these. In particular his concerns about the approach taken by CASLP when members of the syndicate wanted to leave the scheme. Reviewing the transaction listing provided this appears to have happened twice. In July 2013 when £167,000 was withdrawn from the fund and again in September 2016 when £51,000 was switched.

There are clear terms and conditions in documents such as the Syndicated Property Agreement and the Personal Pension Portfolio, about what CASLP's approach should be if a member of the syndicate decides to leave. Section 3 of the former, Termination, continuation, death and early transfer, includes the following provisions:

3.1.2 Provided that there is sufficient liquidity to meet a claim on the fund then in accordance with the terms and conditions of the Personal Pension Portfolio the value of the syndicate member's share of the fund on a transfer or on taking benefits…before a realisation date…will be reduced…The reduction will be effected…by reducing the price of units by 10%...Any reduction shall be subject to a maximum total reduction in the unit price for this purpose of 20% except that we reserve the right to apply a higher maximum if in our sole opinion, this is justified by property market conditions…

3.1.3 Any payment from the fund will be made by reducing any cash balance which is held as an asset of the fund and has not been earmarked to fulfil a contractual obligation. If there is insufficient such cash [CASLP] will instruct the fund manager to liquidate sufficient of the non-property assets of the fund, excluding any assets earmarked to fulfil a contractual obligation, to meet the requirement. If there are insufficient such cash and/or non-property assets to meet a payment due from the fund [CASLP] will notify the agent in writing.

3.1.4 If after six months from the date of written notifications to the agent there is still not sufficient liquidity in the fund to make the payment [CASLP] will instruct the property fund manager to sell the property.

I think these provisions make clear CASLP needed to maintain a grip on the overall investment proposition, albeit with the professional support of those it appointed to provide such, so that it could understand the impact on the scheme and syndicate members of key events, such as a member's wish to disinvest.

I note that in June 2013 PHG had commissioned a valuation report for the retail building. Key amongst its findings were that the capital value of the property had been eroded. The market value was said to be about £1.37 million. This maintained a trend established since 2006 for significant annual reductions in value. Further, the report established that the rent receivable at that time of about £123,000 per annum was substantially above what would be achievable in the market of around £87,000.

CASLP was in receipt of the report when it permitted the switch of a member or members from the syndicate. This was a decision that doesn't appear to have been supported by the fundamentals of the retail building investment.

I say this because in 2013 the prospect for rent receipts for the foreseeable future were poor – the best the syndicate could reasonably expect was to maintain income until the end of the lease of its main tenant in 2017. That best case would yield around £614,000. As at the end of 2012 the syndicate had cash reserves of about £ 282,000. From these assets of £896,000 it had to meet outstanding borrowing of £718,000, which was due to be cleared by November 2017. In basic terms, that left just around £178,000 for the syndicate to draw on until 2017.

It was against this backdrop that CASLP facilitated the switch of a member or members from the syndicate taking £167,000 from the fund. This left a balance of around £11,000. Bearing in mind annual costs to the syndicate including commission payments, managing agent fees, SIPP fees, business rates and insurance, and taken together with ad hoc costs arising, such as valuation fees, based on the evidence I've seen, it should've been clear to CASLP that to allow the departure of the member or members in July 2013 effectively exhausted scheme liquidity. Indeed this is what transpired.

Mr L says he was told the mortgage on the commercial property would be cleared by the expiration of the head lease in 2017, but this didn't happen. He notes the syndicate was faced with a forced sale at auction, which was averted by arranging a further bank facility while incurring additional professional fees.

It's not in dispute that the original loan agreement was due to be cleared in November 2017. But due to liquidity issues this wasn't possible, therefore the loan with the financier was extended twice to allow time for the sale. In summary the loan details on the retail property were as follows:

- Loan 1 - £1.3 million which ran between August 2004 and November 2017. At this date around £200,000 was outstanding, but there was insufficient liquidity in the scheme to pay this.
- Loan 2 – a facility for £200,000 was made available on an interest only basis between November 2017 and October 2019. This left £140,000 outstanding.
- Loan 3 – a final facility for £140,000 also on an interest only basis, from October 2019 until the sale was executed in March 2020.

In his view the Investigator concluded:

"…I understand that there was no liquidity in the fund to make the necessary payment at the end of the loan agreement, and the value of the property was such that a loss would have been incurred had it been sold."

"But ultimately, the loan had been made to CASLP; it was they who were responsible for ensuring it was repaid. So I think the failure to ensure it was cleared by the required date, was a failing on their part. A further consequence of this failing, was the need to list the property for auction twice, incurring further costs in the process."

In responding to the Investigator's view CASLP said:

"*Ultimately, the syndicate would be responsible for the repayment of the loan by utilising the cash funds available. As we know, at the end of the [interest only] loan term, the syndicate did not hold enough cash to repay the £400k [interest only] loan in full. This was due to market conditions and the withdrawal of members from the syndicate which decreased the* *amount of cash available. Therefore, a new loan arrangement was required for a proportion of the outstanding loan."*

CASLP also said:

"The loan agreement specified that the loan was to be repaid by 24 December 2017. By that date, there was still an amount outstanding. There was not enough liquidity in the fund to make the necessary payment at the end of the loan agreement, and due to market conditions the value of the property was such that a loss would have been incurred by the members had it been sold and the outstanding Interest Only element paid off. Therefore, faced with having to sell the property at a loss, a new loan arrangement was agreed so that the members could keep the property to be sold at a later date, when market conditions were more favourable. This scenario is an inherent risk associated with this type of investment."

I agree in broad terms with most of the Investigator's findings and conclusions. But I'd express matters here slightly differently. I don't think it was CASLP's responsibility to ensure the loan taken out by the syndicate in 2004 to assist with the purchase of the retail building was repaid. This was clearly an obligation on the syndicate. And matters of investment performance are relevant. As already rehearsed, market conditions meant the holding wasn't successful. That wasn't within CASLP's control.

What was CASLP's responsibility was to safeguard the interests of the pension scheme and its members. For example, had it not arrived at an agreement with the financier in the period between 2018-2020, a forced sale/repossession would've been a real prospect. That would've had a consequent impact on value achieved for syndicate members. So I can see an argument it fulfilled its role at this point.

The problem for CASLP, as already established, was that it doesn't appear to have fulfilled its responsibilities under the Syndicated Property Agreement when it facilitated a member or members of the syndicate to switch out of the arrangement.

From the available information it's unclear what action CASLP took to assess the impact of scheme leavers in 2013 and 2016 in terms of cash flow and liquidity implications, looking forward to the 2017 mortgage maturity date. It's unclear how it weighed and arrived at the decision not to proceed to sell the property at each trigger point, as provided for in the Syndicated Property Agreement. And it's unclear what it had modelled in terms of the implications for remaining scheme members.

From the available information it's also unclear how syndicate members were fully informed about leavers from the scheme, and particularly the impact on the cash-flow forecast for the investment and liquidity requirements, given proximity to the 2017 mortgage repayment date. It's unclear what information was presented to them, how and when. Did they have the necessary information to support any decision making about whether to endorse PHG recommendations to continue to hold the property, and whether or not to leave the scheme?

In my provisional decision I said that if CASLP was to mount a compelling challenge to my decision it would need to provide much more evidence in relation to these material considerations. It hasn't done so.

I also had a request for Mr L to provide me with further evidence. I noted his syndicate voting decision in 2015 when PHG conveyed a recommendation to syndicate members to hold the property for a further three years. He voted in favour of the advice. And in August 2018 the same recommendation was made and Mr L voted in the same way. At that time he also indicated his desire to remain in the syndicate rather than leave it. Mr L said the following about his voting decisions over the lifetime of the investment:

"Basically I chose always to follow the recommendations of the managing agents Attivo. I was not at any time told that other members had left the syndicate or that there was a potential liquidity problem. It was not until my financial advisor took up the case in 2018/19 that I learned members had left the syndicate. I also understood and had been told the mortgage would be cleared and the property debt free at the expiration of the lease at the end of 2017 which was also a relevant factor in my voting decisions."

On balance, based on the available evidence, I've concluded CASLP's actions fundamentally undermined the liquidity of the retail building scheme when it facilitated the withdrawal of a member or members in 2013. That led to a chain of events that should've been foreseeable, such as the failure to clear the original loan by the end of 2017 and the need to seek a new facility from 2018. All of which led to increased costs on the syndicate.

When facilitating the withdrawal of syndicate members, who appear to have been motivated to leave given the penalties and fees they faced on exit, based on the information available to it at the time, I think that in order to protect the interests of other syndicate members, CASLP should've invoked the process to sell the property from 2013.

I've seen correspondence between the financier of the retail building scheme and CASLP from during 2018, which I think is instructive. As CASLP sought to negotiate a new loan facility and stave off a forced sale or repossession of the property the financier wrote to it in the following terms:

"Based on current information, it seems clear that the Fund will not be able to meet its obligations under the current Facility Agreement, as there are insufficient monies to maintain the account within the Overdraft Facility following the agreed reduction which will be applied on 1 December 2018 (or the next Business Day thereafter). This will effectively bring the agreement to an end, and if the sum outstanding was not repaid in full, could result in action being taken by the Bank to enforce the security it holds over the Charged Property."

"There is no clarity on cash flows over the coming months; the Bank has no real understanding of what payments are due out and how these will be met, and whether the Fund will be able to meet its obligations in respect of property costs, Fund costs, bank interest etc."

"There is no certainty as to when formal leases will be signed, what lease terms will be agreed, what cash will come into the Fund and when."

"It appears that the Fund does not have sufficient cash to carry out the proposed works on the ground floor and nor is there any certainty as to how long the works would take and when [the new main tenant] would take up their potential tenancy and start to pay rent."

"It is unclear as to the current value of the property (last valuation for the Bank was undertaken in 2012). In the light of the above concerns, the Bank is not willing to provide additional facilities for the Fund."

"Assuming that the Bank were willing to provide a new temporary Overdraft facility at £140,000 (requiring the Fund to meet interest costs), cash would still appear to be a concern. There is currently c.£15k of headroom in the facility and c.£5k on account with CASLP. £20k is unlikely to be sufficient to undertake the works required on the ground floor and fire escape pending settlement of dilapidations and the Fund also needs to meet business rates of c.£3.3kpm, interest c£0.7kpm and an annual fund valuation due by year end (costs to be met by the Fund)."

"A detailed cashflow forecast covering all anticipated income & expenditure for the next 6 months is required, and consideration given as to whether it is realistic to assume that

dilapidations can be concluded, re-letting achieved, the property taken to market / auction and a sale achieved within 6 months, or whether cash constraints are such that an early sale is appropriate."

"The Fund therefore needs to consider its position carefully, and provide the Bank with the cashflow forecast and the Fund's repayment proposals within 28 days."

We know that an agreement was reached between CASLP and the financier, which ultimately resulted in the sale of the retail building in 2020 for £860,000.

I note one of Mr L's arguments was around the time taken by CASLP to deal with dilapidations. I think the matter here is complicated. For example, we know the main tenant at the retail building had been a bank. Its long lease came to an end in December 2017. After this it was 'holding over', meaning it remained in situ and paying rent, but this didn't provide certainty for any of the parties.

To achieve certainty, in September 2017 PHG arranged for a Section 25 notice to be served ending the bank's current tenancy with effect from April 2018. This was a legal requirement. The document made proposals to the bank for a new agreement at a lower rent of £110,000 per annum. There was some to and fro between the parties' as negotiations unfolded. But by the end of January 2018 the bank decided it wouldn't be taking a new lease.

I've not seen anything which makes me think CASLP or PHG were at fault here. They tried to secure the then existing main tenant, but in what was perhaps a reflection of general market conditions and the particular requirements of the bank, those efforts failed.

The situation with the main tenant necessarily had a knock on effect to other matters. For example the property had to be assessed for dilapidations. A specialist firm had to be put in place. It led the process of assessment and then negotiations with the former tenant about payments to be made to make good the property. It also had to assess and make recommendations in relation to compliance with building and fire regulations.

These actions in turn impacted on decision making around the timing of tendering for all the works required and then project management of these to completion. This had an impact on being able to secure another tenant for the main part of the building. This was required to achieve the best selling price for the retail building. And all of these matters had to be considered in the context of the liquidity of Mr L's pension scheme and any necessary financing arrangement to avoid a forced sale of the property, which was being actively threatened.

There's no debate matters here took a long time to finalise. The bank left the property at the end of April 2018. A schedule of dilapidations was served on the former tenant by June 2018, but it seems putting things right along with other necessary works wasn't completed until August 2019. Negotiations about the claim were still ongoing in September 2019 between the surveyors representing the former main tenant and the syndicate's interests. Agreement was finally reached in December 2019 when the bank agreed to pay a substantial claim for £85,500.

I understand why Mr L thinks CASLP should've instructed its professional contractors to start building works immediately the former main tenant had vacated. But this was a complicated matter with lots of moving parts, several parties involved, key dependencies in play and significant constraints. A good example of this is the disposition of the financier of the original loan made to the syndicate to complete the purchase of the retail building in 2004.

It seems clear from the correspondence with the financier, CASLP had to be mindful of the impact on liquidity of the scheme if it authorised works on the retail building to take place before a successful substantial claim for dilapidations had been agreed, given the lack of headroom available and the financier's position on these matters.

I think the process of putting right the retail building after the main tenant had left was a complicated matter for the reasons I've established. But I've also concluded these were added to and exacerbated by liquidity issues experienced by the fund, and that was CASLP's responsibility in this case.

Given my earlier conclusions about CASLP's management of leavers from the scheme in 2013, the issues around delays in having the retail building ready to receive a new main tenant becomes somewhat a second order matter. That's because I've concluded, it's more likely than not the property should've been readied for sale from 2013 and the syndicate ultimately wound-up.

Putting things right

I'm upholding Mr L's complaint. So, he needs to be returned to the position he would've been in now - or as close to that as reasonably possible – had it not been for the failings which I hold CASLP Ltd responsible for.

I'm sure both parties will appreciate redress isn't often a scientific matter. And I'm conscious of the need to avoid the benefit of hindsight. Nevertheless, I believe my proposals are fair and reasonable in the circumstances.

If CASLP Ltd had done everything it should've, I've concluded it's more likely than not the syndicate for the retail property should've been wound-up following the member or members request in 2013 to switch their funds away from the scheme, as provided for in the Syndicated Property Agreement. Because it should've been clear at this point withdrawal of funds on such a scale would fundamentally undermine the scheme's liquidity.

So I require CASLP Ltd to carry out a calculation to assess what, if any, loss Mr L has incurred. Firstly, it needs to find the closing value of his investment in the retail building, after all costs have been deducted. This will be value A.

It should then undertake a calculation to find the notional value of his investment had it initiated action in 2013 to have wound-up the syndicate following the fund switch request. The figure will necessarily need to take into account a contemporaneous value for the property and omit relevant income streams and expenditures arising after the relevant date (the assumed point of sale). It is also appropriate to take into account any notional costs that would've arisen from such action, such as solicitor's fees, marketing and auction costs.

CASLP Ltd will need to make assumptions based on relevant market evidence from the time about matters such as the realisable value of the retail building and how long it would've taken to sell. It will need to rely on scheme rules and normal practice to determine matters such as whether the members who left the syndicate in 2013 would've been permitted to do so in advance of winding-up, or alternatively once a decision had been taken about the viability of the investment, all members would've been treated in the same manner. Whatever approach it takes will need to be demonstrably fair and reasonable.

CASLP Ltd will need to add annual interest at 8% simple to this sum from the point of sale until the point at which Mr L's actual funds were made available to him. This will be value B.

I'm not aware of the detailed position regarding any additional contributions Mr L made to his investment. Similarly, I don't know if he's withdrawn any benefits. After confirming the detailed position, then the value CASLP obtains or the calculations it makes should assume these adjustments would still have occurred and on the same dates.

The adjusted, as appropriate, like for like difference between the notional value of Mr L's investment and the equivalent closing value of his investment, will be his basic financial loss that CASLP needs to redress. That is to say, if B is larger than A there has been a loss and redress is owed to Mr L. But if A is larger than B Mr L hasn't incurred a financial loss as a result of what happened.

CASLP Ltd needs to settle the redress within 28 days of confirmation Mr L has accepted my final decision. After this it will need to add 8% simple annual interest until payment is made.

Income tax may be payable on any interest paid. If CASLP considers it's required by HM Revenue & Customs (HMRC) to deduct income tax, it should tell Mr L how much has been taken off. It should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax from HMRC if appropriate.

If paying compensation into Mr L 's SIPP would conflict with any existing protection or allowance, then it should pay his compensation as a cash sum. In doing so it should make a notional deduction to allow for income tax that would otherwise have been paid.

The notional deduction should be calculated using Mr L 's marginal rate of tax in retirement. It's assumed he is a basic rate taxpayer, so the reduction would equal 20%. However, if Mr L would've been able to take tax-free cash, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

CASLP Ltd should provide details of its calculations to Mr L in a clear and simple format.

My final decision

For the reasons I've set out, I'm upholding Mr L's complaint. I now require CASLP Ltd to put things right in the way I've directed.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 24 March 2023.
Kevin Williamson
Ombudsman