DRN-4039277

The complaint

Mr S complained that Pi Financial Limited (trading as Money Foundations) advised him

to switch his Aviva Personal Pension (PP) into a Self-Invested Personal Pension (SIPP). This advice facilitated investment into a high-risk product - the Optima Worldwide Group (OWG) bond which failed, causing him to lose the money he invested in it. He would like to be compensated for his losses.

What happened

Several firms will be mentioned in this decision. These are:

Legal Partnership (LP) - unregulated introducer
Pi Financial Ltd, trading as Money Foundations (Pi) - regulated financial adviser
Strand Capital Limited (Strand) – stockbroker
Horizon Stockbroking (Horizon) – discretionary investment manager
James Hay (JH) - SIPP provider

Mr S was introduced to Pi by the Legal Partnership (LP) to advise him on moving his Aviva pension fund to a SIPP. LP was an unregulated introducer to Mr S's adviser, whose firm was an appointed representative of Pi. LP also promoted unregulated investments.

Mr S signed a letter dated 9 January 2014 asking Pi to arrange a new SIPP into which he could transfer his Aviva Personal Pension. The letter also said that "I wish to choose my own investment choice which may involve direct investment in Shares."

On 21 January 2014 various forms were completed including a client agreement, fact find, knowledge and experience assessment, SIPP application and pension transfer questionnaire.

According to the client agreement, Pi would offer advice having "assessed your needs and considered your financial objectives and attitude to any risks that may be involved."

The Fact Find showed that Mr S held no other investments or pensions and that he needed a retirement income of £12,000 a year at his intended retirement age of 65 (of which £4,000 a year was to come from the Aviva scheme). (The Fact Find also recorded a target of £10,000 a year plus a lump sum of £20,000.) The knowledge and experience assessment showed that the Aviva PP was his only experience of investing to date.

The new SIPP application form had an investment section where the only choice selected was the "Specialist Investments Module."

On 22 January a suitability report was provided recording the advice. This noted Mr S's desire to invest in specific investment areas and recommended the JH SIPP to meet his objectives. The report also said that no advice was being provided on any investments to be held by the SIPP.

Mr S's adviser completed a file note on 24 January indicating that *"He specifically asked me not to comment on the suitability of the product nor compare it to his existing scheme and only recommend a SIPP provider. To that end I was not provided with any ceding scheme documentation.*

He is receiving investment advice from The Legal Partnership and asked me for no investment advice concerning the funds to be held within the SIPP."

£20,000 of the £26,000 transferred was subsequently invested in the OWG bond, via an execution-only account with Strand Capital. The bond was an unregulated investment that aimed to pay annual interest of 8%.

On 29 January 2018 JH wrote to Mr S stating that there had been issues with OWG.

In July 2018 Mr S gave Pi authority to instigate a review of the advice and to pursue a case with the Financial Services Compensation Scheme (FSCS) against Strand Capital, which had since entered special administration. By the time of Mr S's SIPP statement in April 2019 the OWG bond was valued at £0.

On 17 May 2021 the FSCS told Mr S that they could not consider a case against Strand until other avenues had been exhausted, including a case against Pi in relation to their advice.

Pi rejected Mr S's complaint on the basis that they had not given any advice on the investments, only on the SIPP holding them. They did not accept that they had any regulatory responsibility to assess the intended investment in detail, and felt this responsibility lay with Strand Capital. Pi also referred to the FCA Handbook and case law to support their position.

Once Mr S had received the final response from Pi, FSCS told him that it was for this service to determine whether it was appropriate for Pi to restrict its advice to just the SIPP wrapper.

Our investigator provided his opinion that Pi was responsible for the losses Mr S experienced because they should have taken into account the underlying investments when recommending the SIPP.

Pi did not accept this position. Further, Pi now also said that they thought the case was time-barred under our rules and could not be considered. Our investigator disagreed.

The case was referred to me for a final decision.

My provisional decision

I issued my provisional decision on 7 March 2023. It said:

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

Before I consider the complaint itself, first I need to decide whether in fact this is a complaint this service can consider. The rules under which the Financial Ombudsman Service can consider complaints are provided in the FCA Handbook at DISP 2.8.2R which 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, redress determination or summary resolution communication; or
(2) more than:
(1) six years after the event complained of; or (if later)
(2) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint"

In relation to the first test, Pi sent Mr S their final response on 16 July 2021. Mr S then brought the dispute to this service on 29 July, which was well within six months.

The advice about which Mr S has complained was dated 22 January 2014 which is more than six years before the date of the complaint. However, Mr S would not have been aware at the time of advice that he had cause for complaint. He would only have become aware of this much later.

The key events in this respect are: JH wrote to Mr S on 29 January 2018 to let him know there were problems with the OWG investment and Strand Capital. On 4 July 2018, Mr S gave Pi authority to review the SIPP and underlying investment (Strand/OWG, recommended by Horizon). Pi investigated and concluded on 26 August 2018 that OWG was not a suitable investment for retail clients. Pi offered to help Mr S with his FSCS claim since Horizon had been declared insolvent on 5 July 2018 and claims against it had been accepted by FSCS. Mr S received his response from FSCS on 17 May 2021, which told him that FSCS could not consider a claim against Strand Capital until all other avenues had been exhausted. This would have to include a claim against Pi for the SIPP advice.

So I have to decide when Mr S became aware, or ought to have become aware, that he had cause for complaint against Pi. While he would have been aware of problems with his underlying investments that could lead to losses from 29 January 2018, in the months that followed Pi reviewed the suitability of the underlying investment, concluding that it was unsuitable, although they concluded that the SIPP itself was suitable.

I think that Mr S would have believed Pi that the issue was with the underlying investment and that Horizon or Strand were responsible. Pi, his regulated adviser, had told him in August 2018 that there was no cause for concern about the SIPP, and he believed that this was the extent of their responsibility. It was not until 17 May 2021, when he received his response from FSCS, that Mr S could have become aware that Pi was potentially responsible.

That he allowed Pi to help him in his claim against Horizon with FSCS shows that Mr S was reliant on Pi.

So in fact the relevant date for the three year clock under DISP 2.8.2R was not 29 January 2018 but 17 May 2021. Mr S brought his complaint to Pi on 19 May 2021, just two days later, and then to this service on 29 July having received his final response from Pi on 16 July.

So I find that this complaint was brought to this service within the relevant time limit and is therefore one that I can consider.

Merits of the complaint

Pi have submitted detailed submissions which I have considered in full. However, I'll focus in this decision on what I consider to be the key material issues in deciding a fair outcome for this complaint.

Pi's position in summary is that:

- *Mr S instructed Pi to recommend an appropriate SIPP provider. They only provided Mr S with a limited advice service on this specific instruction. Given the limited nature of the retainer the firm took reasonable steps to ensure that its recommendation was suitable.*
- *Pi didn't provide Mr S with advice on the investment in OWG. Mr S either selected his own investment or was advised on this by LP.*
- *The investment strategy for the SIPP was the responsibility of Strand and Horizon who were also regulated firms. They are responsible for Mr S's losses and not Pi who*

only played a very limited role here.

Relevant considerations

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

The FCA's Principles for Businesses (PRIN) apply to all authorised firms including Pi. Of particular relevance to this complaint is:

PRIN 2: 'A firm must conduct its business with due skill, care and diligence.'
PRIN 6: 'A firm must pay due regard to the interests of its customers and treat them fairly'
PRIN 9: 'A firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment'.

In addition, where regulated investment advice is given, the more detailed Conduct of Business Sourcebook (COBS) rules apply. Of particular relevance to this complaint is COBS 9 which applies where a firm makes a personal recommendation in relation to a designated investment.

COBS 9.2.1R:

'(1) A firm must take reasonable steps to ensure that a personal recommendation, or a decision to trade, is suitable for its client'.
(2) When making a personal recommendation, a firm must obtain the necessary information regarding the client's:

(a) knowledge and experience in the investment field relevant to the specific type of designated investment or service;
(b) financial situation; and
(c) investment objectives;

so as to enable the firm to make the recommendation, or take the decision, which is suitable for him.'

COBS 9.2.2R:

'(1) A firm must obtain from the client such information as is necessary for the firm to understand the essential facts about him and have a reasonable basis for believing, giving due consideration to the nature and extent of the service provided, that the specific transaction to be recommended, or entered into in the course of managing:

(a) meets his investment objectives;
(b) is such that he is able financially to bear any related investment risks consistent with his investment objectives; and
(c) is such that he has the necessary experience and knowledge in order to understand the risks involved in the transaction or in the management of his portfolio.

(2) The information regarding the investment objectives of a client must include, where relevant, information on the length of time for which he wishes to hold the investment, his preferences regarding risk taking, his risk profile, and the purposes of the investment.

(3) The information regarding the financial situation of a client must include, where relevant,

information on the source and extent of his regular income, his assets, including liquid assets, investments and real property, and his regular financial commitments.'
I am also mindful of the general legal position including the law relating to causation, foreseeability and remoteness of losses.

My considerations here are:

- *Did Pi give Mr S investment advice including a personal recommendation?*
- *If so, was the advice suitable?*
- *If the advice was unsuitable I need to consider whether:*
- *Mr S would have relied on the advice or whether he would still have moved his pension and invested in OWG regardless of Pi's advice; and*
- *If Mr S did rely on Pi's advice, how fair compensation should be calculated in the specific circumstances of this case.*

Advising on Investments

I have firstly considered whether, based on the facts of the complaint, Pi provided Mr S with regulated investment advice.

As far as I can see Pi agrees that they recommended a particular SIPP with a particular SIPP provider to Mr S. This is also clearly evidenced in the suitability report which says that Mr S "wished me to recommend an appropriate SIPP into which you can transfer your current Aviva Life Personal Pension policy" and that "I have recommended a [JH] SIPP."

Mr S's adviser also said in his letter of 20 January 2014 that he would be responsible for selecting an appropriate SIPP provider and setting up the transfer of funds. Indeed a large part of Pi's position is that they did in fact recommend the SIPP.

So I am satisfied Pi was giving regulated investment advice to Mr S and was therefore bound by the requirements of COBS 9 as quoted above.

Was Pi entitled to rely on their 'limited retainer'?

Pi has said they provided a limited advice service in accordance with Mr S's instructions. Mr S asked for advice on a SIPP but said he would make his own investment choices. Pi says they didn't provide advice on the switch from Aviva to the JH SIPP or on where the transferred fund would be invested.

The issue to determine is whether Pi was entitled to restrict their advice to the recommendation of the SIPP wrapper only. Having considered this carefully I don't think it was fair and reasonable for them to do so.

The purpose of Pi's regulatory duties under FSMA (and COBS) is to provide consumer protection taking into account the differing risks involved in different kinds of investments, the differing degrees of experience and expertise consumers have and the needs consumers may have for the timely provision of information and advice that is accurate and fit for purpose (Section 1B FSMA).

When recommending the SIPP, Pi needed to have a reasonable basis for believing that their recommendation would meet Mr S's objectives and that he was able to bear any related investment risks. Mr S's recorded objective was to transfer his Aviva pension to the SIPP so he could choose his own investments which may include direct investment in shares.

The adviser said in his file note dated 24 January 2014 that Mr S was being advised on the investments by LP. Pi said in their review of 26 August 2018 that the adviser knew he would be using Horizon, a "specialist investment firm." Pi also said in their final response to Mr S that his adviser "did review the suitability of the OWG Bond."

I consider the risks of switching the Aviva personal pension and the risks of the intended investment through the SIPP were a direct consequence of the establishment of the SIPP itself. Had Mr S left his money with Aviva he would not have been able to invest in OWG. Following COBS 9.2.2R, Pi couldn't ignore the context of why Mr S wanted a recommendation for a SIPP or what his intentions were once the SIPP had been established.

In order to advise on the merits of setting up a specific SIPP product, Pi needed to have regard to Mr S' wider circumstances including how the funds were currently invested (Aviva Managed fund) and what the intended investment strategy would be (Strand/Horizon and therefore potentially OWG or similar investments). Assessing the suitability of a SIPP in isolation without considering the whole transaction is not reasonably possible.

Indeed the FSA published an alert in 2013 when they became concerned that regulated financial advisers were misinterpreting the rules. The alert focused on unregulated investments which were introduced by unregulated introducers as these held particular risks for customers. The alert said:

'It has been brought to the FSA's attention that some financial advisers are giving advice to customers on pension transfers ***or pension switches*** *[my emphasis] without assessing the advantages and disadvantages of investments proposed to be held within the new pension...'*

'The FSA's view is that the provision of suitable advice generally requires consideration of the other investments held by the customer or, when advice is given on a product which is a vehicle for investment in other products (such as SIPPs and other wrappers), consideration of the suitability of the overall proposition, that is, the wrapper and the expected underlying investments in unregulated schemes.'

'Financial advisers using this advice model are under the mistaken impression that this process means they do not have to consider the unregulated investment as part of their advice to invest in the SIPP and that they only need to consider the suitability of the SIPP in the abstract. This is incorrect.'

'For example, where a financial adviser recommends a SIPP knowing that the customer will transfer out of a current pension arrangement to release funds to invest in an overseas property investment under a SIPP, then the suitability of the overseas property investment must form part of the advice about whether the customer should transfer into the SIPP. If, taking into account the individual circumstances of the customer, the original pension product, including its underlying holdings, is more suitable for the customer, then the SIPP is not suitable'

And it specifically referred to cases where advisers were under the false impression they could advise on the suitability of a SIPP in the abstract. In 2014 a further update was issued in which the regulator reiterated [emphasis added]:

'Where a financial adviser recommends a SIPP ***knowing*** *that the customer will transfer or switch from a current pension arrangement to release funds to invest through a SIPP, then the suitability of the underlying investment must form part of the advice given to the customer.* ***If the underlying investment is not suitable for the customer, then the***

overall advice is not suitable.'

*'The initial alert outlined our view that where advice is given on a product (such as a SIPP) which is intended as a wrapper or vehicle for investment in other products, provision of suitable advice generally requires consideration of the overall transaction, that is, the vehicle or wrapper and the expected underlying investments (**whether or not such investments are regulated products**).*

*Despite the initial alert, some firms continue to operate a model where they **purportedly restrict their advice to the merits of the SIPP wrapper**.'*

Pi has said the alert was to provide guidance where there was an 'advice gap' and the adviser was the only regulated party in the transaction. And this wasn't the case here. Pi says Strand would have given advice on the investments. But Mr S's Strand account was on an execution-only basis so there is no evidence that they were intending to provide investment advice.

In any event, I think applying a narrow reading of the alert to only specific circumstances is misguided. The essence of the alert, in my view, was to remind advisers that they couldn't just advise on a SIPP in isolation, but that to comply with their regulatory obligations they needed to consider the consumer's wider circumstances and whether what they were intending to do was suitable and in their best interests. I want to be clear that I think Pi's obligations in this regard stem from COBS 9 and the Principles. The alert just provides clarification and sets out expectations from the regulator and good industry practice. The requirements of COBS 9.2.2R don't fall away even if another regulated party is involved. It follows that in order to give suitable advice on the SIPP Pi needed to consider Mr S's wider circumstances and the suitability of the whole transaction, i.e. the switch from Aviva to the SIPP, the suitability of a particular SIPP product and provider, and the underlying investment strategy.

I would also point to COBS 2.1.2R which sets out clearly that a firm must not seek to exclude or restrict, or rely on any exclusion or restriction of any duty or liability it may have to the client under the regulatory system. So Pi couldn't limit their obligations under COBS 9 by taking instructions to only consider the SIPP wrapper in isolation. COBS 9 also required Pi to consider the wider suitability of Mr S' intended transactions when recommending a SIPP, regardless of any limitations Mr S might have wanted to introduce.

Pi and Mr S had an advisory relationship where Pi were the experts and they had a duty to meet their regulatory obligations. The Client Agreement signed by Mr S said that Pi would offer advice having assessed his needs and considered his financial objectives and attitude to any risks that were involved.

Pi failed to do this so I find that they did not act fairly or reasonably when providing their advice to Mr S.

Pi Financial referred to the court case Denning v Greenhalgh Financial Services which it said considered the scope of duty of advisers.
I have considered Denning v Greenhalgh, but it doesn't change my findings either. This case concerns the extent of an adviser's responsibility to review historical advice given by another firm.

For the reasons I have already explained, I'm satisfied that Pi gave regulated advice on the suitability of the particular SIPP. They had to comply with their regulatory obligations under COBS 9 and, in that sense, I don't think Denning is of value to that determination.

In summary, I consider that, when advising Mr S on the suitability of the JH SIPP, Pi had to consider the suitability of the whole intended transaction including the pension switch and where Mr S intended to invest after the transfer.

Did Pi provide suitable advice?

COBS 9 required Pi to take reasonable steps to provide Mr S with a suitable recommendation, so I have carefully considered whether they met this requirement.

A knowledge and experience assessment was completed in January 2014 along with the other paperwork. This indicated that Mr S's only investment experience had been with a personal pension, where he had experienced fluctuations in value. He had no experience of non-mainstream investments, or of making his own investment decisions. So Pi should have queried why Mr S wanted to invest in something that was much higher risk, with the potential for large losses. I think it was clear that he did not have the knowledge and experience to be able to understand the risks of the non-mainstream or 'specialist' investment he was considering following the switch to the SIPP. Therefore Pi did not meet the requirements of COBS 9.2.2R.

Mr S's adviser said in the report that he did not carry out an attitude to risk assessment, but there are a number of important questions in the Pension Transfer Analysis questionnaire that I think tell us something about Mr S's feelings about risk.

By selecting options from a range, Mr S indicated that he was prepared to accept reasonable levels of volatility for higher long term results; he would be concerned with losses between 10% and 15% in a year; he was prepared to take a lot more risk with some of his pension fund; and his second highest priority, after increasing his pension, was "The security of my pension fund;" finally, when indicating that accessing a wider range of investment funds was very important to him, he failed to not indicate a specific type of fund he wanted to invest in.

Taking this all into consideration, I can see no evidence that Mr S was prepared to accept the risks of the specialist investments offered by Horizon. The potential losses were much higher than 10-15% in a given year, and indeed could be up to 100% which was not in line with his desire to ensure the security of his pension fund. Pi itself concluded (in August 2018) that OWG was not suitable for Mr S as it did not match his risk profile. So I find that Mr S was not willing to take the risks involved in the transaction.

In relation to Mr S' ability to bear the risks of the advice (his capacity for loss) the fact find shows that Mr S wanted a retirement income of £12,000 a year (or £10,000 a year and a lump sum of £20,000). £4,000 a year of this was to come from the Aviva pension. Although the file did not record where the rest of the income would come from, (possibly his State Pension) it is very clear that he could not afford to lose the money in the Aviva pension. Based on the evidence I have seen I do not think that Mr S could afford the risks involved.

One final point is that Pi also knew that Mr S would be funding the SIPP by transferring the money from the Aviva pension. Although the suitability report states that the adviser had recommended that the Aviva contract was replaced, there is no evidence of any analysis to show why it was not suitable.

Since the Pi adviser helped to complete the application form which had only the specialist investment module selected; and given the introduction came from LP; and given that he knew that LP was advising Mr S on the investments, I think that it is likely that Pi knew about the characteristics of those likely investments before making the SIPP recommendation, so the advice would have been unsuitable for the reasons given.

However, if Pi's position is that they did not know about the investments at the time of advice, then I think they should have done more to find out. Otherwise Pi would not have been able to determine whether the transaction as a whole was suitable for Mr S, so they would not have taken reasonable steps to ensure the advice was suitable.. If Pi didn't know anything about the underlying investments they should not have offered advice.

So in summary, I think that Pi should not have recommended a SIPP to Mr S given what they knew about Mr S and his intentions. They should have explained that the intended investment was too high risk and that given this was all of his private retirement savings at the time, he couldn't financially bear the risks with this money.

So I find that Pi were in breach of the Principles and COBS when they recommended the SIPP which facilitated an investment which was clearly not suitable for him . They didn't pay due regard to Mr S's interests and did not take reasonable steps to ensure that their personal recommendation was suitable for Mr S as per their regulatory obligations.

Therefore I do not consider that Pi's actions in their dealings with Mr S were fair or reasonable in the circumstances.

Would Mr S have transferred his pension to a SIPP and invested in OWG anyway?

I considered whether Mr S would have proceeded with the transaction regardless of what Pi advised him to do. The OWG brochure detailed some of the risks of the investment and if Mr S saw this brochure - which is something I don't know - he might have known that it was unregulated and high risk. I also considered that Mr S's adviser said that he was getting advice from LP which could have persuaded him to proceed.

However, on balance, I think explicit advice from Pi acting as a regulated professional firm advising him not to proceed would have carried significantly more weight than any general wording in application forms or brochures warning the investment was high risk, or anything he might have been told by an unregulated business.

The consequences of the loss were hugely significant to Mr S' overall financial position. He lost all of his private retirement provision (except for the money he withdrew) which represented 1/3 of his retirement income target. He didn't have the capacity to bear significant losses to his pension, which was a real possibility with the investment in the OWG bond. So I think on balance if Pi, as a regulated adviser and independent third party, had clearly explained they couldn't recommend the SIPP as the intended investments were not suitable for him, the transaction wasn't in his best interest and he couldn't afford to risk his pension in this way, then he would not have proceeded.

Given that Pi was or should have been aware that Mr S was being influenced by LP, who did not have the same regulatory responsibilities that Pi did, they should have established what he had been told and corrected any potential misconceptions.

I'm not persuaded the evidence suggests that he was so keen to invest via LP that he would have gone ahead if the regulated, professional advice had been not to do so. For these reasons, I'm satisfied that Mr S was more likely than not to have followed Pi's advice if they had explained the position in full and recommended against the SIPP and investment with OWG as it was unsuitable. I think, on balance, Mr S would have remained in the Aviva pension and stayed invested in the Managed fund.

Reliance on another regulated party: COBS 2.4.4

Pi also said COBS 2.4.4 should be considered. They say they were entitled to rely on

Strand/Horizon providing a suitable recommendation for Mr S.

But I don't consider that COBS 2.4.4. applies here. The rule broadly says where a firm (F1) receives an instruction from another regulated firm (F2) to carry out a regulated activity on behalf of a client, F1 can rely on assessments or information provided to it by F2. Pi suggests in these particular circumstances they were F1 and Strand/Horizon were F2.

However, Pi didn't receive any instructions here from these firms so I don't see how this changes anything.

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.

As neither party has responded to my provisional decision with any new evidence or arguments, I see no reason to change the findings from my provisional decision. I therefore uphold Mr S's complaint against Pi.

Putting things right

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

I have taken the view that Mr S would have remained with his previous provider. I am satisfied that what I have set out below is fair and reasonable in this situation.

What must Pi do?

To compensate Mr S fairly, Pi must:

- Compare the performance of Mr S'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.
- Pi should also add any interest set out below to the compensation payable.
- Pi should pay into Mr S'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 Pi is unable to pay the total amount into Mr S'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 S won't be able to reclaim any of the reduction after compensation is paid.
- The notional allowance should be calculated using Mr S's actual or expected marginal rate of tax at his selected retirement age.
- For example, if Mr S is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal the current basic rate of tax. Pi should assume that

Mr S is likely to be a basic rate taxpayer at the selected retirement age. Since Mr S has already taken his full tax free lump sum, the reduction should be applied to 100% of the compensation.

- Pay to Mr S £500 for the significant worry and distress experienced as a result of losing such a significant part of his retirement savings.

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

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

Notional Value

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

Any additional sum paid into the investment should be added to the fair value calculation from the point in time when it was actually paid in.
Any withdrawal from the SIPP should be deducted from the notional value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if Pi totals all those payments and deducts that figure at the end to determine the notional value instead of deducting periodically.

The SIPP only exists because of illiquid assets. In order for the 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 Pi taking over the illiquid assets, or this is something that Mr S 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 Pi is unable to purchase the illiquid assets, to provide certainty to all parties I think it's fair that it pays Mr S 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 SIPP to be closed.

My final decision

For the reasons given I uphold Mr S's complaint against Pi Financial Ltd. I require Pi Financial Ltd to pay compensation to Mr S in line with the approach set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 20 April 2023.

Martin Catherwood
Ombudsman