DRN-4063498

The complaint

Mr D complains about the acts of Mr Y. He says that Mr Y was involved in the advice which resulted in the switch of his pensions to a self-invested personal pension (SIPP) to invest through a discretionary fund manager (DFM) – SVS Securities PLC (SVS). He 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

Mr Y worked for a business called Future Wealth Management Ltd (FWM) between 13 May 2015 and 11 October 2018. That business was an appointed representative of Pi between 15 January 2015 and 5 March 2019.

Mr D says towards the end of 2017, he was advised by Mr G to move his pensions to a SIPP to be able to invest through a DFM called SVS. Mr D had dealt with Mr G as an adviser previously.

He says on this occasion, he never received any documentation signed by Mr G. Instead, he says the advice letter dated 12 January 2018 provided to him by Mr G was on FWM headed paper with Mr Y's name. Mr D says he never met with or spoke with Mr Y. Despite this, the letter included the following:

> *"It was good to meet with you on 14 December 2017. I am now writing to confirm the content and outcome of our discussions…*
>
> *You will recall you were provided you [sic] with a copy of my Client Agreement on the 14 December 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 pensions contract…and set up a SIPP to allow you to access your monies flexibly and have greater investment choice. You wish to consolidate your three plans under the one arrangement and have access to a wider panel of investments and the flexibility to change these to reflect your circumstances and attitude to risk as you have been disappointed with the returns in your with-profits fund.*
>
> *You also wish to be able to leave your entire fund to your family 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…*

Your only objective in retirement is that you wish to have a good standard of living which you have at the moment. You currently Have no mortgage outstanding on your property so your outgoings are more than manageable. You wished to give this sum of money the opportunity to grow so that you can use this to support your leisure pursuits in retirement . You currently feel that you are financially comfortable so these monies would just be used for any leisure pursuits or home improvements you may wish to do. You wish to have flexibility of with regards to whether monies are invested, how you can access these and how they are managed.

You completed a risk profile questionnaire and you scored 5 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 Mixed 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 January 2018 and just over £70,000 was moved into it from Mr D's three previous pensions. Most of that money was transferred to SVS in March 2018.

In 2019, SVS went into administration and it looks like Mr D suffered a significant loss to his pension from his holdings with SVS.

After first contacting the Financial Services Compensation Scheme, Mr D complained to Pi saying that Pi was responsible for the advice.

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.

When the complaint was referred to our service – and after an investigator initially upheld the complaint - 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 FWM. It said the complainants each believed that Mr G was their sole adviser – not Mr Y. Pi also said that

Mr G was 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 Mr D's complaint against it. It therefore asked that we get Mr D's detailed recollections of what happened.

Pi also said that if Mr Y of FWM had been involved, this would have breached the appointed representative agreement it had with Pi and that Pi would therefore not be responsible for the complaint.

Another investigator looked at things again and was still satisfied that we could consider Mr D's complaint against Pi and that it should be upheld. In summary, she said that whilst Mr G had been involved, the evidence suggested Mr Y of FWM had also given advice and made arrangements and this was something that had been allowed under the appointed representative agreement with FWM.

Pi didn't agree. I've read and considered its responses (including those of its legal representatives) in full. In summary, it has said:

- It reiterated that Mr G had actively misrepresented to many complainants that he was an authorised adviser of FWM – when he was in fact only an introducer. He had likely also likely mislead Mr Y too in this process and it couldn't thus be inferred that Mr Y knew what was going on.

- Mr G had given the advice to Mr D. As an introducer, Mr G was not authorised to give advice on behalf of Pi. He had fraudulently misrepresented the position to all parties.

- There was no evidence that Mr Y had allowed Mr G to submit advice to complainants in Mr Y's name or that he'd made any arrangements himself.

- Mr G had obtained access to Mr Y's and FWM's portal, tools and stationary – this allowed him to produce documentation and submit forged applications under the pretense that he was an adviser of FWM.

- None of the documentation was hand signed by Mr Y – his name was simply typed on the letters. This is unusual.

- Even Mr D considered Mr G to be his adviser and was confused as to why the advice letter had Mr Y's details. He, like other complainants, simply went along with things as he trusted Mr G. Mr G was acting fraudulently and using his position of trust to mislead clients and the advice process and processing of the SIPP application had nothing to do with Mr Y or FWM.

- 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.

- Mr D is not and has never been a client of Pi – there's no past, present or future provision of services to Mr D by FWM. And as he's not a customer, he's not an eligible complainant.

- It's clear from Mr D's evidence that Mr G held himself out to be an adviser. There's no evidence that Mr D had any contact with Mr Y, let alone that he received advice from him. Mr G never intended Mr D would get advice from anyone else and he was

always intending to carry out business with him under the guise of FWM.

- The fact commission fees were sent to Pi doesn't show it knew of, and had accepted responsibility for, the acts of Mr G. The receipt of the fees was a passive act. The receipt of the fees was also not causative of Mr D's loss. Neither Pi nor Mr Y had any prior knowledge of the business that had been submitted by Mr G.

- If Mr Y had been involved in approving Mr G's acts in giving advice or submitting the SIPP application, he would have been in breach of the appointed representative agreement between FWM and Pi. This agreement said that Mr Y could not sub-contract duties to third parties without the pre-approval of Pi.

- 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.

- The Conduct of Business Sourcebook (COBS) 10 Rule 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 recommendation of the SIPP and SVS portfolio was suitable for Mr D's aims, objectives and risk profile. Any subsequent loss was the fault of SVS

- The investigator assessed the risk profile of SVS with the benefit of hindsight rather than with reference to any material available in January 2018. 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)). FWM (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 Mr D 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 Mr D has complained about?

Mr D complains about the role of Mr Y in the advice he received to switch his pensions to a SIPP to invest through SVS. I think this includes any arrangements made for the switch and investment.

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 Mr D's

previous pensions and the SIPP he 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.

Mr D says although he was initially advised by Mr G, he never received any paperwork signed by Mr G and the advice letter he 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 Mr D to switch his pensions and invest through SVS. There are several things that satisfy me this is the case

- The recommendation letter dated 12 January 2018 clearly gave Mr D advice.

- We have seen a number of similar complaints where Pi say that Mr Y was not aware of what was happening. Yet, many of these complaints involve the SIPP operator copying in Mr Y to email correspondence for applications. There has been adequate explanation for this from Pi.

- In this case, the SIPP operator sent Mr D an email on 30 January 2018 which read:

  Thank you for your application for a Simple Investment SIPP…submitted through your Financial Adviser [Mr Y] at Pi Financial Limited. We are processing your application and we will liaise with your financial adviser if we need any additional documentation or information. We will write to you again once your application has been accepted and your pension has been established.

  …if you do have any questions, please do contact [Mr Y] at Pi Financial Limited.

- On 8 March 2018, Mr Y was copied into an email from the SIPP provider to Mr D confirming that money from his previous pensions had been received. It went on to confirm that the initial 3.25% fees would be paid to his "financial adviser" shortly.

- On 15 March 2018, Mr Y was copied into an email from the SIPP provider to SVS referring to him as Mr D's "financial adviser".

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

- Fees were paid to Pi. I can't see why Mr G would arrange for the fees to be paid in this way if he was doing everything without Mr Y's knowledge or involvement.

My finding, taking into account the above evidence, is that it is improbable that Mr Y would not have known that FWM was being used to give advice to Mr D. I'm satisfied it's most likely Mr Y was aware of the content of the advice letter and allowed it to be sent in his name, even if he didn't draft it himself. Otherwise, I would have expected to see some evidence of Mr Y querying why he was receiving correspondence about applications he had nothing to do with.

I note everything Pi has said about the validity of the suitability letter and the fact it wasn't signed by Mr Y. But from the evidence I've summarised above, it's clear he was involved in what was happening. And 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.

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

I'm also satisfied that Mr Y carried out the regulated activity of making arrangements. On 30 January 2018, the SIPP provider sent Mr Y an email that read:

> *Thank you for the application for the above client. We will write to the client to acknowledge the application and send you a copy.*

And although I haven't seen a copy of Mr Y submitting the application, I'm satisfied he did. And the email referred to earlier from the SIPP provider to SVS dated 21 March 2018 went on to say Mr Y would:

> *where appropriate, either send us appropriate instructions for the investment of these funds to forward to you, or will organise for investment instructions to be submitted online via your website.*

Mr D's passport and bank statement also seem to have been certified by Mr Y on although I note that Pi disputes that.

My conclusion therefore is that, on balance, Mr Y did give advice to Mr D 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 FWM when he advised Mr D and made arrangements. The only mention of any other business is that in the emails Mr Y was copied into (above), the email address that was used wasn't his FWM one and instead was an email address at a different business. But the fact the recommendation letter was sent in his capacity at FWM, the application documentation all referred to FWM, the SIPP operator referred to him as representing Pi, and fees were paid to Pi satisfy me that he was acting as FWM 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 FWM.

The agreement with FWM

The appointed representative agreement between Pi and FWM 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 Mr D and making arrangements in relation to his specified investments.

Any other breach of the agreement by Mr Y on behalf of FWM in this case would, in my view, be a breach of *how* certain activities are performed rather than *what* activities can be performed by an adviser. In the *Anderson & Ors v Sense Network Ltd [2019] EWCA Civ 1395* case*,* the Court of Appeal drew a distinction between these types of restriction. The breach of the latter kind of provision takes the appointed representative's conduct out of the principal's ambit of responsibility under Section 39(3) FSMA, but breach of the former doesn't.

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

My decision – jurisdiction

I don't agree with Pi that Mr D 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 – and why

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

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 Mr D to move his 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.
- Mr D's knowledge and experience.

At the time, Mr D earned around £39,000 and had little or no investment experience or knowledge. The pensions that were switched (around £70,000) were Mr D's only pensions and he was in his 50s and so approaching retirement age with a low capacity for loss – even if he may have been thinking about accessing his pension in different ways. The recommendation letter of 12 January 2018 referred to him as a "balanced risk investor" according to the risk profile questionnaire he completed. Taking everything into account, I'm satisfied Mr D was a balanced risk, inexperienced, investor and someone for whom traditional low-cost pension arrangements would have been suitable.

The new arrangement recommended to Mr D 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. But more significantly, the DFM service would also have had costs. Additionally, there were the adviser fees – an initial fee of 3.25%and an ongoing fee of 1%.

The letter of 19 January 2018 set out the reasons for recommending the SIPP as being that it would allow Mr D to access monies flexibly and have greater investment choice. It would also allow him to leave his entire fund to family in the event of your death and 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 Mr D in his circumstances. There's no evidence that Mr D – with his modest pension funds – needed access to a wider range of investments or that such funds wouldn't have been available with his previous pensions. And if there was a genuine desire by Mr D to consolidate his pensions into one fund, it seems likely there'd have been cheaper options, such as a stakeholder pension – something that was dismissed in the recommendation letter without any real explanation.

Taking everything into account, I'm satisfied it ought to have been clear to Mr Y that there was no obvious justification for Mr D to move from his existing schemes and enter the arrangement he did. And this assessment is based on knowledge Mr Y ought to have had at the time – not what we now know about the subsequent failure of SVS.

In these circumstances I'm satisfied advice to switch Mr D'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, Mr D would have left his pensions as they were.

Even if Mr Y didn't advise Mr D, 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 Mr D's best interests to move his 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 Mr D, then it seems likely he knew Mr D had been advised by an unregulated introducer and he should have taken this into account.

Pi has commented on the fact that Mr G gave advice and it says it should be Mr G who is culpable. Pi has also argued that the losses Mr D has suffered is due to the mismanagement of SVS.

It is true Mr G gave advice to Mr D when he should not have done so. And the FCA identified issues with SVS and its management of funds and assets.

But this complaint is against Pi – not Mr G or SVS. 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 Pi had its own distinct regulatory obligations to give suitable advice and otherwise treat Mr D fairly and act in his best interests.

So, whilst I take account of the potential contribution made by other parties to the losses suffered by Mr D, I think it's fair and reasonable to make an award against Pi that requires it to compensate Mr D for the full measure of his loss. That's because it seems clear to me from this and other complaints brought to our service that Mr Y, on behalf of FWM and Pi, was engaged in a process of transferring many clients' pensions (including Mr D) to SIPPs and SVS without any proper regard to what was suitable for them or what was in their best interests. This was not a case where there was some minor, unfortunate failing on the part of Pi. But for Pi's actions, Mr D would not be in the position he is now.

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 Mr D's right to compensation from Pi for the full amount of his loss.

Putting things right

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

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

In summary, Pi should:

1. Calculate the loss Mr D 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 Mr D's pension in respect of his pension losses. If that isn't possible, pay compensation for the loss to Mr D direct. In either case, the payment should take into account necessary adjustments set out below.

4. Pay Mr D's SIPP fees for the next five years, in the event he's now not able to close his SIPP.

5. Pay compensation of £300 for the trouble and upset caused to Mr D.

6. Pay interest on the above if fair compensation isn't paid within 28 days of notification of acceptance by Mr D.

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

1. Calculate the loss Mr D has suffered as a result of making the switches and investing through SVS

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

Pi should ask Mr D's former pension providers to calculate the current notional transfer values had he not switched his pensions. If there are any difficulties in obtaining a notional valuation, then a benchmark of the FTSE UK Private Investors Income Total Return Index 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 Mr D has suffered.

Any additional sum that Mr D 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. Mr D would then be able to close the SIPP, if he 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 Mr D to provide an undertaking to account to it for the net amount of any payment the SIPP might receive from the investments once he's been compensated in full for his 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 Mr D may receive from the investments and any eventual sums he'd be able to access from the SIPP. Pi will need to meet any costs in drawing up the undertaking.

3. Pay compensation to Mr D for the loss he's suffered in (1)

Since the loss Mr D has suffered is within his pension, it's right that I try to restore the value of his pension provision if that's possible. So, if possible, the compensation for the loss should be paid into Mr D'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 Mr D could claim. The notional allowance should be calculated using Mr D's marginal rate of tax.

If it's not possible to pay the compensation into Mr D's pension, the compensation should be paid to Mr D 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 Mr D should be reduced to notionally allow for any income tax that would otherwise have been paid. The notional allowance should be calculated using Mr D's marginal rate of tax in retirement. For example, if Mr D 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 Mr D 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 Mr D is unable to close his 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 Mr D wouldn't be in the SIPP but for the unsuitable advice. So, it wouldn't be fair for him 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 Mr D £300 for the trouble and upset caused. I'm satisfied Mr D has been caused significant upset by the events this complaint relates to, and the loss of a significant portion of his 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 Mr D 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 Mr D how much has been taken off. Pi should give Mr D a tax deduction certificate in respect of interest if Mr D asks for one, so he 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

Mr D in a clear, simple format. My decision is that Pi Financial Ltd should pay Mr D 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 Mr D 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 Mr D can accept my decision and go to court to ask for the balance. Mr D 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 Mr D to accept or reject my decision before 28 September 2023.

Abdul Hafez
Ombudsman