DRN-4125920

The complaint

Mr T complains that Morgan Lloyd SIPP Services Limited ('ML') acted inappropriately in accepting him into a self-invested personal pension ('SIPP') which he says was unsuitable for a retail client; he says ML should have carried out due diligence on investments within the SIPP and its failure to do this has caused him a significant loss.

Mr T has a professional representative, but for ease I'll refer only to Mr T in this decision.

What happened

Mr T had an occupational defined benefit ('DB') pension. And at this time, Mr T was also the controlling director of his private limited company, which I'll call 'Company T'.

Mr T received advice from adviser 'Firm C' on the transfer of his DB benefits. Firm C's June 2010 suitability report said Mr T's circumstances were that he was employed full-time as director of his business, and was taking minimal salary to protect Company T through its initial growth. That the success of Company T was paramount to his long-term goal and he hoped the wealth it generated would fund his retirement. The report also said Mr T wanted to consider the transfer of his DB benefits. Because he wanted to inject capital into Company T which he could use to pay down his Director's loan account or negotiate the early settlement of Company T's finance agreements to ease cash flow and provide working capital. The report recorded that they discussed how a SIPP could facilitate his investment requirements, and that Mr T wished *"to consider using pension funds to purchase company intellectual property; thereby releasing pension fund equity to the company to fulfil your current corporate funding requirements."*

Mr T signed a declaration that he wished to proceed with the DB transfer.

Firm C provided a further suitability report in July 2010, which said, amongst other things,

"[Company T] was formed in 2006 and the principal activity of the company is the production of green energy. Whilst discussing your current objectives, we addressed the future plans and prospects for the business, and also the trading position of the company…

The company is currently seeking to expand. The past 18 months has been a time of consolidation due to cash flow constraints. The company has had to turn away work to the upfront cost of meeting the demand. With the repayment of company debts and a cash injection to the business the directors believe that the business will be able to meet demand. This will subsequently increase turnover and profit and further allow the company to develop new and initiative projects in the growing renewables sector.

Recent trading has been lower than desired due to cashflow. Upon inception, the business was experiencing high demand and producing high growth, this was reduced due to the effect on cash flow of finance agreements on machinery. The company still has high demand, some of which has to be turned away due to financial constraints. It is the aim of the director to inject capital to ease the cash flow burden and remove debt, enabling the company to take full advantage of demand and the subsequent growth."

Mr T wanted to raise £123,000 to help repay Company T's debts and allow it to take on more work. The funds would be invested into Company T by way of Mr T transferring his DB pension into a SIPP with a provider I'll call 'Provider CT', which in turn would be used to purchase Intellectual Property ('IP') owned by Company T (its company trademark) at a price of £123,000 plus VAT, and the IP would be licensed back to Company T for a monthly cost. So the IP would effectively belong to Mr T's SIPP as an investment, with the funds raised used by Company T.

Mr T's DB pension benefits were transferred to a SIPP with Provider CT and the IP investment was made.

Following further advice from Firm C, in December 2011 Mr T transferred from a SIPP with Provider CT to a new 'Qualitas' SIPP with ML, on the basis it was more cost-efficient. It appears that as part of this, the IP investment was transferred 'in specie', i.e. without cashing it in first.

In May 2012, Company T sadly dissolved and the value of Mr T's IP investment therefore reduced to zero.

In July 2014, Firm C prepared a suitability report for Mr T which recorded that they'd discussed *"winding up"* Mr T's SIPP and transferring it to *"a more suitable arrangement"*. That its current value was £25,604 and its assets were an investment portfolio (£25,602) and a cash balance (£2). And that Mr T had confirmed he wouldn't be using the ML Qualitas SIPP for business funding again, so he wanted to ensure his SIPP was still the best option for him. Firm C recommended he switch to another SIPP with ML (its 'Directus' SIPP) so he could access ML's real-time valuation portal and invest in a slightly lower risk investment portfolio. Mr T followed this recommendation and his ML Directus SIPP opened in July 2014.

Mr C engaged his professional representative in 2020, as he says it became apparent he'd been given bad advice about using his DB pension to support investment in his business, and he wanted professional support to claim against the SIPP provider for providing poor advice and behaving exploitatively.

In March 2021, Mr C made a claim to the Financial Services Compensation Scheme ('FSCS') about Provider CT. The FSCS decided Mr T didn't have a valid claim. It said the FSCS was a scheme of last resort, and Provider CT was still trading. That Provider CT hadn't advised Mr T or failed in its due diligence by accepting his DB transfer. The FSCS said Firm C was responsible for the advice regarding the DB transfer and the purchase and leaseback of the IP investment. It thought Mr T should contact Firm C regarding his claim.

Mr T complained to Firm C about its advice, but Firm C didn't uphold his complaint so Mr T referred it to the Financial Ombudsman Service. Ultimately, an Ombudsman at our Service decided we couldn't consider Mr T's complaint against Firm C, because Firm C's advice was mainly in connection with Mr T's trade or profession, so Mr T wasn't an eligible complainant.

In March 2021, Mr T complained to ML about its due diligence. But ML didn't provide a final response, and so Mr T referred his complaint about ML to our Service for an investigation.

Mr T told us, amongst other things, that:

- In 2010, his business Company T had needed to expand production to meet rising demand but there was no access to credit. He came across Firm C, who promoted using pension savings as a form of business investment. Firm C had said his DB pension was worth around £250,000 and this seemed perfect, as it would pay off debt taken to set up Company T and buy the required production equipment to

expand, albeit it turned out his DB transfer value was less in the end. But it was either go with the pension transfer or fold Company T and declare bankruptcy.
- At the time of the transactions, he'd had no other pensions, little in savings, and a property with a high mortgage.
- ML had failed to provide reasonable skill and care in allowing such a highly speculative, risky and illiquid asset into a SIPP.
- ML had accepted him into a SIPP which was unsuitable for a retail client.
- ML should have carried out due diligence checks on investments within the SIPP, and its failure to do so had caused him financial loss.
- There had been a conflict of interest because Firm C and ML had the same parent company, so ML should've ensured he sought independent financial advice.
- He'd had a conservative attitude to risk and been reliant on regulated firms.

For its part, ML told our Service that:
- It had been for Firm C to advise Mr T, not ML.
- Before his relationship with ML started, he'd already opened a SIPP and made the IP investment. ML wasn't involved in that.
- ML had met all its due diligence responsibilities when Mr T transferred his existing SIPP to an ML SIPP (initially in December 2011). His SIPP owned IP in respect of Company T, and his SIPP consisted of a license agreement and lease arrangement, and a cash balance.
- When Company T entered liquidation, the IP assets were written off.
- Even if ML had rejected Mr T's SIPP business in 2011, he'd still have held the IP investment within his previous SIPP. So he'd still have these losses.
- Mr T closed his ML SIPP in June 2021 by transferring the balance to another provider.
- There hadn't been any conflict of interest. The relationship between Firm C and ML was made clear to Mr T at the start. Many firms have the same parent company, the regulator was aware of the relationship here, and controls were in place to manage potential conflict.
- Mr T's losses resulted from the decisions he and his adviser had made, and the failure of Company T.

An Investigator at our Service thought Mr T's complaint against ML had been brought in time. But after considering its merits, she didn't think it should be upheld. She said Mr T had made the IP investment via a SIPP with his previous SIPP provider. That the IP investment was later transferred in specie to an ML SIPP; and she invited both parties to tell her if her understanding about it being an in specie transfer was incorrect. She thought ML wasn't responsible for Mr T's IP investment. And that even if she agreed ML shouldn't have accepted the in specie transfer of the IP investment, Mr T would be in the same position.

Mr T disagreed. He accepted ML didn't give him advice but said that before accepting the transfer, ML should still have carried out due diligence on all the investments accepted - it couldn't turn a 'blind eye' to the IP investment or to any other high risk or unsuitable investment with the portfolio.

ML acknowledged receipt of the Investigator's view, but didn't provide our Service with any further comments or evidence for consideration.

As agreement couldn't be reached, Mr T's complaint against ML was passed to me for a decision. At my request, Mr T provided some further information. Where this is relevant, I've included it in the background set out above.

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 should start by acknowledging that the Dispute Resolution ('DISP') rules set by the regulator the Financial Conduct Authority ('FCA') set out the circumstances in which our Service can and can't consider the merits of a complaint.

I note neither party has disputed our Investigator's view that Mr T's complaint has been brought within the time limits set out in DISP. However, whether something falls within our jurisdiction is also dependent on several other factors. And of relevance to Mr T's case is whether he is eligible to bring this complaint. And eligibility is determined by reference to the eligibility provisions in DISP at the time the complaint is made.

DISP 2.7.3R says an eligible complainant must be a person (that is a natural person, a legal person and, for example, a partnership) that is one of types listed. Most of the types listed aren't relevant in Mr T's case. However, 'micro-enterprise' may be a relevant type. But I note Company T is no longer trading and that the financial loss in question here was suffered by Mr T's pension rather than Company T. So I don't think Mr T could bring this complaint as a director of Company T under the provisions for a micro-enterprise

And 'consumer' may also be a relevant type. For the purposes of DISP 2.7.3R the glossary to the FCA handbook defines consumer since 9 July 2015 as *"…an individual acting for purposes which are wholly or mainly outside that individual's trade, business, craft or profession…".* So to meet this definition, Mr T would need to be acting wholly or mainly outside his trade, business, craft or profession (i.e. in a personal capacity) when making this complaint

It's clear that Mr T is complaining about losses he as an individual may have suffered to his pension. However, just because an individual claims for personal losses, this isn't enough to satisfy the definition of a consumer under the rules. And it's clear from the evidence that the only reason Mr T had a SIPP and made the IP investment (which is the investment Mr T complains about here) was to provide funding for his business, Company T.

Given all this, it's debatable whether Mr T is eligible to bring this complaint as a consumer. But regardless of this, the particular circumstances of this complaint mean that I don't think ML needs to do anything to put things right in any case. I'll explain why.

I have taken into account a number of considerations including, but not limited to:

- The agreement between the parties.
- The Financial Services and Markets Act 2000 ('FSMA').
- Court decisions relating to SIPP operators, in particular Options UK Personal Pensions LLP v Financial Ombudsman Service Limited [2024] EWCA Civ 541 and the case law referred to in it including:
    - Adams v Options UK Personal Pensions LLP [2021] EWCA Civ 474
    - R (Berkeley Burke SIPP Administration) v Financial Ombudsman Service [2018] EWHC 2878
    - Adams v Options SIPP UK LLP [2020] EWHC 1229 (Ch)

- The Financial Services Authority and FCA rules including the following:
    - PRIN Principles for Businesses
    - COBS Conduct of Business Sourcebook
    - DISP Dispute Resolution Complaints
- Various regulatory publications relating to SIPP operators, and good industry practice.

In the circumstances of this particular case, it is not necessary for me to quote from the above. Suffice to say, I'm satisfied that to meet its regulatory obligations when conducting its operation of its non-advisory SIPP business, ML was required to consider whether to accept or reject particular referrals of SIPP business and/or investments with the Principles in mind. I say this based on the overarching nature of the Principles (as is clear from the case law) and based on good industry practice. I am also satisfied that bearing in mind the Principles and good industry practice that this obligation was not confined *only* to rejecting an investment on the basis it was not allowed by the SIPP Trust or HMRC regulations.

I am satisfied that to meet its regulatory obligations when conducting its operation of its non-advisory SIPP business a SIPP operator should for example reasonably refuse an investment if the SIPP operator had serious concerns about *"possible instances of financial crime and consumer detriment such as unsuitable SIPPs".* Or, for example if, the SIPP operator had concerns that the investment might not be genuine, or not be secure or might be impaired in some way.

I am also satisfied that a non-advisory SIPP operator could decide not to accept a referral of business or a request to make an investment without giving advice. And I am satisfied that in practice many non-advisory SIPP operators did refuse to accept business and/or refuse to make investments without giving advice.

Furthermore, in order to comply with its regulatory obligations, I think a non-advisory SIPP operator should have due diligence processes in place to check any firms introducing business to them and the investments they are asked to make on behalf of members or potential members. And ML should have used the knowledge it gained from its due diligence checks to decide whether to accept such business and/or allow a particular investment.

So, Mr T is right to say that ML couldn't simply turn a blind eye to the IP investment. But I'm mindful that Mr T's IP investment was originally placed via the SIPP he held with his previous SIPP provider, not with ML. And I note neither party has disputed that the IP investment was transferred to ML on an in specie basis.

This means that Mr T's pension monies had already been used to make the IP investment Mr T complains of *before* ML's involvement, via another SIPP provider. So even if I were to accept Mr T's argument that ML ought to have rejected his 2011 ML SIPP application (and for clarity, I make no finding about this), it wouldn't make any difference to his position. Because even if ML had rejected his SIPP business in 2011 and never allowed the IP investment into its SIPPs, Mr T had already invested SIPP monies in the IP investment via his previous SIPP provider. So regardless of any act or omission by ML, Mr T would have suffered the loss he complains of here.

Taking everything into consideration, I don't think ML needs to take any action here.

My final decision

For the reasons explained above, I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 13 March 2025.

Ailsa Wiltshire
Ombudsman