DRN-4298781

The complaint

Mr G's complaint is that Solutions Financial Services (SFS) didn't give him suitable advice about transferring his pensions to a SIPP (self invested personal pension) and investing in The Resort Group (TRG), Store First and Dolphin Trust, all of which investments have since failed.

What happened

Mr G had several personal pension arrangements with different providers. In May 2012, on advice from SFS, Mr G applied for a SIPP with Rowanmoor. In June 2012 two of Mr G's existing personal pensions were transferred to the SIPP. The total value transferred was £98,268.89. Later in June 2012 an investment of £48,661.70 was made in TRG. On the same day, £22,500 was invested in a Prudential Trustee Investment Plan (TIP) in a Managed Fund. In November 2012 £15,586 was invested in Store First.

SFS ceased to be authorised by the regulator on 21 January 2013.

The last of Mr G's existing pensions was transferred to the SIPP in May 2013. The amount transferred was £5,417.92 which made the total transferred £103,686.81. In February 2014 £10,000 was invested in Dolphin Trust. In September 2015 some of the holdings in the Prudential TIP were disinvested. A few days later a further £19,341.60 was invested in Dolphin Trust.

A statement issued by the SIPP provider showed that, as at 9 May 2022, TRG, Store First and Dolphin Trust investments were all valued at zero. The TIP was valued at £14,931.31 and there was £6,456.90 in the SIPP bank account.

In July 2022 Mr G complained, through his representative, that he'd been given unsuitable advice by SFS about the transfer to the SIPP and the subsequent investments. He said he hadn't been advised that the investments were high risk and illiquid and not suitable for a retail client such as him. The risks hadn't been fully explained and he hadn't been given all the relevant information to make an informed decision as to whether or not to proceed with the pension application, transfer and venture. There was a lack of diversification. His fund should've been invested in a variety of asset classes but instead 100% was invested in high risk and illiquid assets. SFS had failed to assess the suitability of the underlying investment.

SFS said we couldn't consider the complaint because it had been made too late. But the investigator's view was that the complaint had been made within the applicable time limits. The investigator wrote to SFS on 25 January 2023 explaining why he'd reached that view. He went on to consider the merits of the complaint which he upheld.

In summary he said:

- SFS hadn't made any submissions about the merits of the complaint. So the investigator didn't know what arguments SFS wanted to raise. But, based on Mr G's submissions and the evidence the investigator had seen, it was reasonable to conclude SFS had advised Mr G to switch his existing pensions to the SIPP and make the investments into TRG, Store First and Dolphin Trust. The SIPP application showed SFS as the financial adviser who'd acted in relation to the transfer of Mr G's existing pensions to the new SIPP. The form also showed that Mr G and SFS were considering an investment into TRG in the next twelve months. And there was an invoice showing that SFS was paid a fee for the transfer to the SIPP.

- Advising on a SIPP is a regulated activity. The regulator's rules required SFS to know their client and give suitable advice. The regulator (formerly the Financial Services Authority – FSA) had issued a number of alerts about advising on transfers with a view to investing pension monies in unregulated products through a SIPP. The alerts made it clear that the regulator's view was that, to provide suitable advice, consideration had to be given as to how a consumer's funds would be invested.
- The investigator quoted from an alert issued in 2013 by the FSA which said, when advice is given on a product which is a vehicle for investment in other products (such as SIPPs and other wrappers), providing suitable advice generally required consideration of the suitability of the overall proposition, that is the wrapper and the expected underlying investments in unregulated schemes. And, where a customer seeks advice on a pension transfer in implementing a wider investment strategy, the advice on the pension transfer must take account of the overall investment strategy the customer is contemplating.
- The alert wasn't a change in regulation or position by the regulator. It simply restated the principles that already applied and were in place in 2012 when the SIPP was sold to Mr G. SFS had a duty to advise on the suitability of Mr G's intended investment.
- SFS's advice that Mr G switch his existing personal pensions to a SIPP wasn't suitable for him. In early 2012 Mr G had been 42 and earning around £100,000 pa. It seemed he had limited investment experience. He had a mortgaged property and no savings or other investments other than his existing pensions. He couldn't afford to take any significant risks with his retirement funds.
- It wasn't reasonable for SFS to recommend that Mr G switch to a SIPP to facilitate investment in commercial property, an unregulated and illiquid investment. Mr G could only access his pension fund if a buyer could be found for his particular commercial properties. And, if cash was needed, it wasn't possible to sell part of the commercial property so the entire property would need to be sold at the current market rate which may not be favourable at that point. It is also more costly to dispose of property. Overall commercial properties were high risk investments. Mr G had very little investment experience and a limited capacity for loss and shouldn't have been advised to switch his existing pensions to make the commercial property investments.
- Mr G had also invested in a Prudential Managed Fund (the TIP) and that was probably reasonably suitable. But it's likely a similar fund would've been available to him in his existing pensions. So that investment alone didn't make the SIPP necessary.
- If SFS had fully explained the implications of the pension switches, Mr G wouldn't have moved his pension arrangements. If SFS had said TRG and Store First investments were unsuitable, Mr G wouldn't have proceeded with them.
- SFS wasn't responsible for the Dolphin Trust investments. Although Mr G had said that SFS had advised him to invest, the investments had been made after SFS had ceased to be authorised by the regulator in January 2013.
- The investigator set out how SFS needed to compensate Mr G.

SFS continued to maintain that the complaint had been made too late. The investigator considered SFS's further comments but he still thought the complaint had been made in time.

The complaint was referred to me to decide if it was one we could investigate. I issued a jurisdiction decision on 3 July 2023. For the reasons I set out I said the complaint hadn't been made too late and we could consider it.

After I'd issued my jurisdiction decision, the investigator reminded SFS that he'd already issued his view on the merits of the complaint. The investigator invited any new information from SFS and said, if SFS had nothing further to add, the complaint would await an ombudsman's decision. SFS asked what documents had already been supplied and the investigator said SFS hadn't provided any, nor had SFS made any submissions. SFS then sent us some documents, including various fact finds and financial planning reports.

There's a financial planning report prepared by SFS on 10 May 2012 relating to Mr G's retirement provision. Amongst other things, it sets out six categories of attitude to risk, ranging from risk averse (1) to medium/high (5) and high (6). The report said Mr S was prepared to invest 30% in medium/high and 70% in high risk categories. The report referred to discussions over the last three months about Mr G's attitude to risk and said he had a good understanding of the '*Risk Vs Reward*' model and he now wanted to take a greater risk to potentially achieve a greater reward, whilst he still had time to invest. The report said Mr G was fully aware of the potential for significant loss and that had been discussed at length but he was certain he wished to take that approach to potentially achieve a far greater return on his pension fund than he'd done up to now.

The report said Mr G wanted to consolidate his pension funds. And that, because of his '*sophisticated financial awareness*', it had been agreed to take an alternative investment strategy, namely a SIPP. Details of Mr G's two existing personal pension arrangements were set out. An exit charge of £4,605.90 applied to one of the funds but SFS had negotiated a reduction to £2,504.38. The report said Mr G was '*adamant*' he wished to consolidate his pension fund into one pot and had specifically requested a SIPP as he was '*again adamant*' that he wished to invest in property. He was fully aware of the associated charges especially the (reduced) exit penalty. The rationale for SFS's recommendation included the possibility of investing in a commercial property, having all Mr G's pensions with one provider and in one pot, wide fund choice, more active control and management and flexibility to take tax free cash at any time from age 55 without the need to take income.

The investigator considered the report and the other documents SFS had provided. But he told SFS that he hadn't been persuaded to substantively change his assessment of the merits of the complaint. The advice to transfer Mr G's pensions to the SIPP was to facilitate the investment into commercial property. The investigator reiterated what he'd said earlier about investing in commercial property being a high risk strategy and unsuitable for Mr G.

The investigator told SFS that if it still disagreed the matter would allocated to an ombudsman to decide the complaint. We also later told SFS that the case had been allocated to me and that I was considering it with a view to issuing a final decision. We gave SFS a final opportunity to comment but we haven't received anything by the deadline set.

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 noted above, I issued a jurisdiction decision on 3 July 2023. We're required to keep jurisdiction under review throughout our consideration of a complaint. I've done that but my view remains as set out in my jurisdiction decision – that Mr G's complaint has been made in time and we can consider it.

Having gone on to consider the merits of the complaint, I agree with the investigator that TRG and Store First investments weren't suitable investments for Mr G. And, as the investigator pointed out, the recommendation that Mr G switch his existing pensions to a SIPP had to take into account the proposed investments. The SIPP was recommended on the basis that it allowed a wider investment choice. I don't think Mr G had any need to access the sort of investments that were recommended and which, in my view, represented more risk than Mr G should've been advised to take.

Despite what the report dated 10 May 2012 recorded, I don't think Mr G was a sophisticated or experienced investor. I haven't seen anything to indicate he had any significant investment experience, aside from his existing pensions and a stocks and shares ISA (which SFS had recommended in April 2012 and in which Mr G had invested £10,680). He'd have been dependent on advice from SFS.

Mr G did have significant earnings. A figure of £100,000 pa has been mentioned but the various financial planning reports SFS prepared in the first half of 2012 suggest Mr G's earnings were less - £60,000 pa or £65,000 pa. Mr G had no savings (aside from the ISA) or other assets, apart from his property (which was subject to a mortgage) and the pensions which he transferred to the SIPP and which represented the entirety of his retirement savings.

Mr G apparently wanted to adopt a high risk strategy for the majority of his pension fund in the hope of achieving a higher return. The report said Mr G was fully aware of the potential for significant loss by taking this approach and that had been discussed at length. Mr G may have regarded his existing pension provision as unlikely to be sufficient to produce an acceptable level of retirement benefits. But adopting a high risk approach meant he could lose the funds he'd built up to date. I don't think Mr G was in a position to take a high level of risk with his accumulated pension savings. I don't think he had the capacity for loss that might result. It was up to SFS to give Mr G suitable advice, taking into account his overall personal and financial circumstances, his needs and objectives. I think SFS should've advised Mr G against exposing his pension fund to a high level of risk.

Against that background I've considered TRG investment first. TRG sold hotel rooms, either as whole entities or fractional share ownership in a company. Mr G's investment was a 50% interest in accommodation in TRG's Llana Beach resort. As the investigator pointed out, there are a large number of risk factors involved in investing in commercial property. And here the property was overseas which gave rise to other political and economic risk factors, including currency and infrastructure risks. TRG had been operating since 2007 but the Llana Beach resort was a new project so there were development risks and no track record for the investment.

I'm not sure if TRG was an unregulated collective investment scheme (UCIS) but even if not I think it can fairly be described as specialist and non mainstream. And it wasn't covered by the usual regulatory protections. While some investment in that type of asset might not be unsuitable for an investor who is prepared and in a position to take some risk, Mr G was investing £48,661.70 which was approaching half of his SIPP fund and accumulated pension savings.

Mr G did have some time before he intended to retire. He was 47 at the time of the advice so he had around 18 years if he was planning to retire at, say, age 65. It might have been possible for him to have replaced any pension funds that fell in value or were lost altogether. But I don't think that justified the recommendation, given the level of risk the investment presented. And although there seems to have been some discussions about the risks, including that Mr G might lose all of his investment, I don't think that meant Mr G fully understood the risks or made TRG investment suitable for him.

The situation was compounded by the investment of £15,586 Mr G made a few months later in Store First. Again it was an unregulated investment with a limited track record and no investor protection. It was high risk and speculative so Mr G's entire investment could be lost. And it was a further commercial property investment which meant that there was a lack of diversification and too much reliance on one asset class which, for the reasons pointed out by the investigator, was high risk and potentially illiquid.

In my view, the transfer to the SIPP was to facilitate investments which represented more risk than Mr G should've been advised to take. I don't think the reasons given in the financial planning report dated 10 May 2012 justified the transfer. The SIPP wasn't necessary or suitable and taking into account the intended underlying investments. As the investigator pointed out, provision of suitable advice requires consideration of the pension vehicle and the proposed investments. And, although Mr G may have wanted to consolidate his existing pensions, I don't think a SIPP was necessary to do that.

Although the financial planning report records that Mr G was 'adamant' he wanted to switch to a SIPP to invest in commercial property, I don't think he'd have proceeded if SFS had said that strategy and the planned investments weren't suitable for him. SFS had been Mr G's adviser for some years and Mr G's plans seem to have been formulated with SFS's input. I don't think SFS should've suggested or endorsed an investment strategy for Mr G based on commercial property.

At about the same time as TRG investment was made, Mr G also invested £22,500 in the Prudential TIP. I've seen the financial planning report prepared by SFS on 26 June 2012 recommending that investment. I don't think the TIP was necessarily unsuitable, had the rest of Mr G's fund been appropriately invested and diversified. But Mr G wouldn't have needed a SIPP to make the TIP investment and wouldn't have had it but for SFS's unsuitable advice. So I've included the TIP in the redress I've set out below.

But I can't hold SFS responsible for any losses sustained in connection with the investments in Dolphin Trust. The (first) investment was made in February 2014. Even if Mr G's position is that SFS's adviser recommended the Dolphin Trust investments, we can only consider complaints against authorised firms and not individuals. SFS wasn't authorised and regulated after 21 January 2013 and we can't consider a complaint against SFS about anything that happened after then. So I haven't considered either of the Dolphin Trust investments – the first £10,000 that was invested in February 2014 or the further investment of £19,341 in September 2015. And the redress I've set out below, which follows what the investigator suggested, doesn't include the Dolphin Trust investments.

In assessing what would be fair compensation, my aim is to put Mr G as close as possible to the position he'd probably now be in if he'd been given suitable advice. I think Mr G would've remained with his previous providers, but I can't be certain that a value will be obtainable for what his previous policies would've been worth. I'm satisfied what I've set out below is fair and reasonable, taking this into account and given Mr G's circumstances and objectives when he invested.

Putting things right

To compensate Mr G fairly Solutions Financial Services should:

- Compare the performance of Mr G's investment with the notional value if his existing pensions had remained with the previous providers. 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's a loss and compensation is payable.

- Add any interest set out below to the compensation payable.
- If there's a loss it should be paid into Mr G's pension plan, to increase its value by the amount of the compensation and any interest. The payment should allow for the effect of charges and any available tax relief. Compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.
- If the compensation can't be paid into Mr G's pension plan, Solutions Financial Services should pay that amount direct to him. But had it been possible to pay into the plan, it would've provided a taxable income. Therefore, the compensation 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 G won't be able to reclaim any of the reduction after compensation is paid.
- The notional allowance should be calculated using Mr G's actual or expected marginal rate of tax at his selected retirement age. It's reasonable to assume Mr G is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr G would've been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.
- In addition Solutions Financial Services should pay Mr G £300 for the trouble and upset caused.
- Details of the calculation should be provided to Mr G in a clear, simple format.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Rowmanmoor SIPP	Some liquid/some illiquid	Notional values from previous providers as at the date of settlement	Date of investment	Date of settlement	Not applicable

Actual value

This means the actual amount payable from the investment at the end date.

If, at the end date, the investment into TRG or Store First is illiquid (meaning it can't be readily sold on the open market), it may be difficult to find the actual value of the portfolio. So, Solutions Financial Services should take ownership of any TRG or Store First illiquid investments within the portfolio by paying a commercial value acceptable to the pension provider. This amount paid should be included in the actual value before compensation is calculated.

If Solutions Financial Services is unable to purchase the illiquid investment the value of that investment should be assumed to be nil when arriving at the actual value of the portfolio. Solutions Financial Services may wish to require that Mr G provides an undertaking to pay any amount he may receive from that investment in the future to Solutions Financial Services. The undertaking must allow for any tax and charges that would be incurred on drawing the receipt from the pension plan. Solutions Financial Services will need to meet any costs in drawing up the undertaking.

Notional value

This is the value of Mr G's investment had it remained with the previous providers until the end date. Solutions Financial Services should request that the previous providers calculate this value.

Any additional sum paid into the Rowanmoor SIPP should be added to the notional value calculation from the point in time when it was actually paid in.

For the purposes of the calculation, the investments into Dolphin Trust should be treated as a withdrawal from the Rowanmoor SIPP. Any withdrawal from the Rowanmoor 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. To be clear, £10,000 was invested on 5 February 2014 and £19,341.6 on 7 September 2015 into Dolphin Trust.

If a previous provider is unable to calculate a notional value, Solutions Financial Services will need to determine a fair value for Mr G's investment instead, using this benchmark: For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds. The adjustments above also apply to the calculation of a fair value using the benchmark, which is then used instead of the notional value in the calculation of compensation.

The Rowanmoor SIPP only exists because of illiquid assets. In order for the Rowanmoor SIPP to be closed and further fees that are charged to be prevented, those investments need to be removed. I've set out above how this might be achieved by Solutions Financial Services taking over the portfolio, or this is something that Mr G 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 Solutions Financial Services is unable to purchase the portfolio, to provide certainty to all parties, I think it's fair that Solutions Financial Services pay Mr G 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 Rowanmoor SIPP to be closed.

Why is this remedy suitable?

I've chosen this method of compensation because:

- Mr G wanted capital growth with a small risk to his capital.
- If the previous provider is unable to calculate a notional value, then I consider the measure below is appropriate.
- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to his capital.
- The FTSE UK Private Investors Income Total Return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's a fair measure for someone who was prepared to take some risk to get a higher return.
- I consider that Mr G's risk profile was in between, in the sense that he was prepared to take a small level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mr G into that position. It doesn't mean Mr G would've invested 50% of his money in a fixed rate bond and 50% in some kind of index tracker investment. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr G could've obtained from investments suited to

his objective and risk attitude.

My final decision

I uphold the complaint. Solutions Financial Services must redress Mr G as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 4 October 2023.

Lesley Stead
Ombudsman