

The complaint

Through his representative, Mr D has been invited by the Financial Services Compensation Scheme (FSCS) to complain to Hedley & Company Stockbrokers Limited about an investment it allowed his self-invested personal pension (SIPP) to hold. It appears FSCS has informed Mr D that this investment was in Salutation Properties Limited.

The complaint was brought because Mr D complained to his SIPP provider, Liberty SIPP, that it failed in its obligations to carry out due diligence on the investments he made with his SIPP, Liberty is now in default to the FSCS, and Hedley appeared to the FSCS to have a role of investment manager to the SIPP.

No evidence has been provided that Mr D made an investment into Salutation Properties Limited and the evidence available shows the SIPP holding other investments, which I'll discuss below. When we spoke to Mr D directly, he specifically said that he was advised by his financial adviser to invest some of the SIPP into the financial adviser's parent company (which I'll refer to as "C") and that these shares drastically lost money. He considers either Liberty or the financial adviser is responsible for allowing those shares to be purchased.

Mr D has previously complained to this service about the financial adviser's alleged role in advising him on his SIPP, but the adviser didn't consent to our service considering that complaint under the six-and three-year time limits at DISP 2.8.2R(2) in the regulator's handbook. This is because, amongst other investments, Mr D's SIPP bought the shares in C in 2009 and sold them by 2013 – which was when any losses complained about would have transpired.

What happened

In October 2008 Mr D opened the Liberty SIPP and transferred existing pensions from Zurich and Pointon York totalling £111,000 into it. The Pointon York SIPP already held a share-dealing account with Credo worth £27,500. In order to transfer the shares this held 'in specie', a new Credo account was opened within the Liberty SIPP. Mr D's financial adviser was recorded on the Liberty SIPP application.

As part of the application process, Mr D signed the following documents connected with Hedley:

- What Liberty titled a "Investment Management Agreement", with Hedley named as "Investment Manager"
- Hedley's own Custody Agreement, explaining that any shares held would be registered in the name of a nominee company operated by Pershing Securities.

Contract notes for the investments purchased were issued directly by Pershing, and Credo issued reports on the assets held within its account. The contract notes stated Credo had bought the assets on behalf of Mr D's SIPP in its capacity as agent.

In March 2009 the financial adviser informed Liberty that Mr D's SIPP would be purchasing 20,400 shares in C from two other individuals. Liberty then passed the original shares and stock transfer forms on to Hedley, confirming that it would arrange for the CREST share transfer details to be completed. At around the same time a number of the shares held in the Credo account were sold to provide funds for this purchase.

By November 2009 the SIPP held a small amount in cash and the following assets:

- Credo nominee holdings of £33,883, which appear to have included the shares in C
- A commercial property valued at £62,550

Mr D subsequently went on to purchase £13,500 of shares in his own company in May 2010. Although these were held outside the Credo account but within the SIPP, I can see that paperwork such as the share certificates was similarly passed through Hedley to make the investment. Mr D's own company was subsequently dissolved in December 2012, resulting in those shares being worthless.

When Mr D's representative complained to FSCS, it took the view that Hedley's role was of investment manager and with that role came a responsibility to conduct due diligence on the investments made. It was unable to identify any due diligence failings by Liberty, making reference to the fact that the Credo portfolio had been transferred in-specie from Pointon York.

The representative's subsequent complaint to Hedley (at FSCS's invitation) alleged that Hedley had a fiduciary duty to Mr D. But it also said Hedley gave Mr D advice and failed to assess whether the investments being made exceeded his low attitude to risk.

In response, Hedley denied that it was a broker, adviser or investment manager. Its own role was to keep safe custody of the share certificates which were passed to it when transactions were made. As its custodian, Pershing was the nominee owner of the shares.

Although Mr D's financial adviser hadn't previously consented to Mr D's earlier complaint under our six- and three-year time limits, Hedley has done so. And when he looked at the case, our investigator was satisfied there was no evidence to suggest Hedley was advising Mr D, or had the responsibility to assess the suitability of the investments in terms of their risk level. He was also not persuaded that Hedley's limited role in executing instructions and keeping safe custody of share certificates gave it the type of due diligence role implied in the complaint.

Mr D didn't accept the investigator's view and requested an ombudsman's decision. In September 2023. His representative said that evidence in support of their objection would be requested from Mr D and FSCS, but no further evidence has been provided. The deadline was extended until 4 December 2023 and with no further response, I'm now required to make a decision on the complaint.

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.

Although our investigator made his assessment from the point of view of what Hedley's responsibilities were, I think it's also helpful to consider what, if any, assets Mr D's SIPP has purchased were ever likely to come under further scrutiny – from any of the parties involved.

Mr D already had a Credo portfolio before he transferred to Liberty. Whilst I'd still expect Liberty to have had oversight of the assets it contained at inception, I note in this case that Mr D works within the car industry and a number of the shares he bought and sold in the Credo portfolio were in that sector, as well as banking shares and utility shares on the Alternative Investment Market. The SIPP also contained an investment in commercial property which is one of the main reasons people decide to take out a SIPP.

When we asked Mr D about his complaint he referred to making a profit on the car shares he purchased. He also referred to the commercial property being sold at a loss. It's unclear whether he considers anyone is responsible for that happening, rather than simply the way the property market had performed. But for the avoidance of any doubt, any matters concerning how the property was valued would fall between Mr D, Liberty and the surveyors and solicitors used when acquiring the property. Importantly Hedley had no role at all in the acquisition or sale of this property.

Mr D's complaint seems to focus on shares in what FSCS referred to as Salutation Properties, but which I think was actually shares in C. I can see why Mr D is upset at any loss he may have suffered on those shares, because it was presumably as a result of his connection with the adviser that he bought them. There might have been issues for that adviser to address regarding a potential conflict of interest, for example if advice was being given on the purchase of those shares (and I don't know if that was the case). As the complaint against the adviser has been time barred, we can't know what outcome might have been reached.

The question I must ask is whether it's likely that the purchase of these shares would ever have appeared unusual to anyone else connected with the transaction – such as Hedley. It's the very purpose of a SIPP to directly invest in assets and these can include privately-held, unlisted shares. I can see that Liberty informed Hedley that Mr D's SIPP was buying the shares directly from their existing owners, and it arranged the share transfer on this basis. Even if had been possible for Hedley to connect this company to Mr D's adviser, I don't think that would of itself have been cause for concern. It didn't automatically show that Mr D wasn't appropriately informed when making the investment which he was freely entitled to make.

C appears to be a bona fide company which continued to trade many years after Mr D's SIPP bought and sold shares in it. I've not been presented with evidence to suggest that this was in some way a fraudulent vehicle or that checks on its background or accounts would have revealed anything out of place. Ultimately if Mr D considered there was a conflict of interest issue with him investing in a company connected to his adviser, there was a remedy open to him by raising a complaint about this with the adviser within the time limits allowed.

What I can see is that Liberty, rather than Hedley, carried out those checks – and I think that's consistent with Liberty's greater role to conduct due diligence into the investments as Mr D's SIPP provider and trustee. I agree with the investigator that Hedley's role in particular in these transactions was very limited. It clearly didn't give Mr D advice and had no responsibility to assess whether any investments were 'too risky' for him.

Liberty's choice of wording to name it an "investment manager" on an application form doesn't dictate what role Hedley must perform. On that very form the responsibilities listed were forwarding contract notes, valuing the account, carrying out Liberty or Mr D's instructions, and restricting investments to those permitted by a SIPP. That doesn't to my

mind suggest that Hedley's role here was as extensive as I would normally expect the SIPP provider's to be in scrutinising the investments being made.

There is a further investment Mr D's SIPP made, which was in his own company. Investing a SIPP's funds in the shares of a company operated by a connected party may make it liable to being deemed an unauthorised payment for tax purposes. However despite this investment taking place more than ten years ago – and although we asked Mr D about his complaint – he hasn't made any comments about this investment being ill-advised or that anyone else should be responsible for it going ahead.

I can see that Hedley was also aware that Mr D was making this investment. The company appears to have published a business plan to exploit an opportunity for income in the car industry in which Mr D worked. I've inferred that it was a venture Mr D was prepared to make at the time. And in my view any question as to whether he was appropriately advised or informed of the tax consequences would have fallen to his adviser and/or Liberty to address in any event. I say this given Hedley's limited role relative to those other parties and also because the SIPP was technically able to make this investment, notwithstanding the tax implications.

My final decision

For the reasons I've explained above, I do not uphold Mr D's complaint or make any award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 5 March 2024.

Gideon Moore
Ombudsman