DRN-4645609

The complaint

Ms C's complaint is about investment of her Suffolk Life (now Curtis Banks) Self-Invested Personal Pension ('SIPP').

She says Foster Denovo Limited ('FDL') failed to carry out investment instructions she gave in May and June 2017; she was unaware of its failure until 2022, when she began to consider arrangements for benefits from the SIPP; she seeks compensation for financial loss (given that the SIPP remained uninvested and in cash since her instructions), for the trouble and inconvenience that has been caused to her and for the legal fees she incurred when she initially sought to resolve the matter with FDL.

FDL disputes the complaint.

It mainly says it was not Ms C's financial adviser; it initially assisted her in 2010 to arrange contributions into what was, at the time, an employer related Group SIPP; it did not advise on investments at the time (because the SIPP's investments were pre-instructed); it no longer provided service to the SIPP (and received no payment to do so) by 2017 as Ms C was no longer with the previous employer (and no longer part of the Group SIPP); it was her earlier decision, in 2015, to move the SIPP into cash; thereafter, the SIPP's annual statements, sent to her, confirmed and reminded her that it remained in cash; any administrative assistance it gave in her 2017 was free of charge and, essentially, based on goodwill; but it recognises that its communications with Ms C could have been better so it offers, on an ex gratia basis, £500 as an acknowledgement of this.

What happened

One of our investigators looked into the complaint and concluded that it should be upheld, but not to the extent that Ms C claims. He mainly said:

- The 2010 Adviser Election Form ('AEF') for Ms C's SIPP confirmed FDL as its adviser, but it also confirmed that she paid no initial or ongoing adviser fees.

- There is correspondence from July 2015 in which FDL made Ms C aware that it could not give her investment advice, and there is correspondence from September 2015 in which she instructed that the SIPP be liquidated into cash.

- Her investment instructions in 2017 were made on 2 May, 8 May and 12 June.

- After the 2 May instruction, FDL made some enquiries about the four stocks and one fund she specified. Then, on 8 May, it confirmed that it had submitted the investment request (for three of the stocks, and the fund) to Suffolk Life ('SL') and was awaiting their confirmation. Also on 8 May, Ms C instructed investment of the SIPP in another five stocks. FDL invited her to discuss her instruction over the telephone. She called as requested but the relevant official was unavailable. She twice emailed requests (on 10 and 12 May) for confirmation that the second instruction had been actioned. On 12 May FDL confirmed it had requested the additional investment as instructed.

- On 12 June Ms C instructed FDL to invest the SIPP in another stock. FDL asked her to call the relevant official. She emailed to say her call had not been answered. FDL then provided her with direct contact details for SL in order for her to administer and manage her SIPP. She replied with a request for her account details, and FDL provided those too.

- In the circumstances – the AEF, confirmation of FDL as the SIPP's adviser in SL's records, FDL being copied into correspondence for the SIPP, the 2015 SIPP liquidation and the numerous emails between FDL and Ms C – it was reasonable for Ms C to assume that FDL was her adviser for the SIPP. It says it did not get payment for any of its work after she changed employer, but if it no longer wished to assist her or act as her adviser it should have made that clear to her. There is no evidence that it did.

- However, it is also clear that FDL did not give investment advice, but she did not ask for such advice in her 2017 instructions. She only sought FDL's assistance in getting the instructed trades actioned. In the circumstances (as above) it was reasonable for her to believe FDL would help her and, initially, FDL did help her. It was reasonable for her to believe the instructions on 2 and 8 May had been actioned, because FDL confirmed they had.

- Despite her request for confirmation that the 12 June instruction had been actioned, there is no evidence that FDL gave such confirmation. Instead, it gave her SL's contact details, in order for her to deal with them directly. As such, it would not have been reasonable for her to assume that the trade had been actioned.

- The fact that Ms C never received any purchase confirmation from FDL or SL should have raised concern, on her part, as to whether (or not) the relevant stocks (in the first two instructions) had actually been bought. In any case, she ought reasonably to have been aware that none of them had been bought upon receipt of the SIPP's 2018 annual statement, which showed that the SIPP remained wholly in cash.

- SL has told us that it never received any of the instructions, and FDL has been unable to evidence that they were submitted or followed-up, so FDL is responsible for any financial loss arising from the unactioned first two instructions, up to 1 March 2018, around a month after Ms C's receipt of the 2018 SIPP statement – in response to which she should have mitigated against any further loss. Redress on this basis, in addition to the £500 offered by FDL, should be paid to her. However, her claim for compensation to cover legal fees is rejected, because her complaint does not present circumstances or complexity that would make it necessary to involve third party representation.

Both parties conveyed their respective disagreements with the investigator's findings.

FDL mainly said – Ms C chose to self-manage her SIPP and declined a fee arrangement/agreement with FDL for advice; the AEF applied to the separate arrangement with her previous employer, and it became inapplicable after she left that employer; no advice was offered or taken during the events in 2015 and 2017; there were additional factors, including those related to Ms C's citizenship (and investment related laws arising from that) and regulatory requirements, which meant it could not have given her advice in the circumstances as they were, the investigator's view does not cover this; and it is surprising that our service would assume FDL would act against regulations and provide advice.

Ms C made a number of submissions that addressed the investigator's view and FDL's comments.

With regards to the latter, she mainly said its arguments about 'advice' are irrelevant to her complaint; she never sought advice for the 2017 trades and her case is about FDL negligently failing to carry out her instructions for those trades; at the time she believed FDL was her adviser, it was duty bound to act in her best interest; FDL's statements about her citizenship are incorrect, and are also irrelevant to her complaint; and the same applies to comments it made about her profession.

In response to the investigator's view, Ms C mainly –

- disagreed with the finding that it was unreasonable for her to assume, in the absence of confirmation from FDL, that the instruction on 12 June had been actioned. She said –

  during her earlier instruction on 8 May FDL had asked for a telephone conversation; despite that conversation not happening, it confirmed on 12 May that her instruction had been actioned; so when, in response to the 12 June instruction, FDL again asked for a telephone conversation and when, again, that did not happen she reasonably expected that would not hinder action on her instruction; such action was not previously hindered by the absence of the telephone conversation FDL asked for; it is also unreasonable to say FDL's provision to her of SL's direct contact details should have indicated to her that the instruction would not be actioned.

- disagreed with the findings that she ought reasonably to have become aware that the investments had not been made when she received the February 2018 SIPP statement showing its cash content, and that she ought to have mitigated her position thereafter. She said –

  there are two previous decisions from our service which support her argument that the SIPP statement, on its own, is not enough to make the finding about awareness; with regards to the mitigation finding, specific caselaw [which Ms C cited] shows that there is no positive duty to mitigate, instead avoidable losses are deemed irrecoverable if a claimant unreasonably fails to avoid them, and in her case she did not unreasonably fail to avoid her losses; SL primarily communicated with FDL, she did not receive direct communication from SL; she does not dispute that the statement was sent, but she does not recall seeing it; had she seen it and noticed the cash holding, she would have taken action to mitigate; she was away from home (and from the UK) during most of 2018, there were issues affecting the security of post at her home at the time, and she had serious personal matters to prioritise and address in that year; any and all these factors can reasonably explain why any sent statement could have been misplaced or lost; so it is unfair to conclude that the 2018 statement made her aware that the investments had not happened.

- disagreed with the finding rejecting her claim for compensation for legal fees. She said legal assistance was necessary in her case as she was not well versed in the process of pursuing a complaint and it was sufficiently complex to warrant such assistance, especially as FDL's professional expertise in the matter created an inequality of arms in the complaint.

Ms C also argued that FDL had a duty of care towards her – as defined in its operational terms and in regulatory provisions – that extended to it monitoring the SIPP, reviewing it periodically and upholding the Consumer Duty obligations it owed to her. She says it did none of these, and that had it done so the non-existent investments would have been

brought to her attention much sooner, and her losses would have been mitigated.

More recently, she highlighted evidence from Curtis Banks that said FDL had contacted SL/Curtis Banks, with regards to her SIPP, on only two occasions (on 6 January 2017 and 5 September 2022). As such, she said, FD appears to have been dishonest and misleading in its claims about conveying her instructions to SL in May 2017.

The investigator addressed Ms C's objections and responded to her. Nevertheless, she maintains her position on them all and has asked for an Ombudsman's decision.

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.

Having done so, I have reached the same conclusions expressed by the investigator, for reasons akin to those he gave.

Ms C's complaint is not about advice. It is about her 2017 investment instructions for the SIPP and their execution. Evidence clearly shows that the investment instructions contained specific stocks/funds that she wanted to invest in. She did not ask for advice in those instructions, and there is no evidence that FDL offered or gave such advice. As such, the notion of 'advice' is irrelevant to the complaint, as are FDL's arguments about the grounds on which it did not, and was not obliged to, give advice.

It is also noteworthy that the investigator's view does not appear to have said or suggested FDL owed such an obligation, so it appears to be wrong for FDL to say or suggest that our service assumes it should have gone against regulations and given Ms C advice.

For the above reasons, and those I address further below, I consider that the 2010 history in this case is of limited relevance.

A relevant event in 2015 is the liquidation of the SIPP to cash, because it explains why the SIPP began to hold cash (only), and continued to do so up to the 2017 instructions, and beyond. However, Ms C's instruction in 2015 to liquidate the SIPP is not disputed. The same applies to the fact that she did not instruct investment of the cash until 2017, so there is no issue about the SIPP being held in cash up to her instructions in that year. As she has said – and as the investigator addressed – the issue is about the SIPP remaining in cash after her instructions in that year.

In other words, the complaint is about the arrangements she expected FDL to make to enable the investments she instructed in 2017.

I appreciate that FDL might argue that this means the history, going back to 2010, remains fully relevant, because that history defined the basis on which it engaged with Ms C in 2017. The history shows that from 2010 FDL provided a service to the SIPP, defined by its arrangement with her former employer (with regards to the Group SIPP) and reflected by the AEF. That specific service ended when she left the relevant employer. Nevertheless, FDL continued to provide assistance to her and her SIPP despite not receiving any payment, and despite the absence of any service related agreement between them.

Undisputed evidence of that continuing assistance are in the liquidation instruction she gave in 2015 which FDL assisted in actioning, and the May 2017 investment instructions which FDL accepted and confirmed, to her, it had actioned and conveyed to SL. It also received the June 2017 instruction, but, as a matter of fact, its response did not confirm acceptance of

the instruction. As I explain later, its referral of Ms C to deal directly with SL essentially conveyed the opposite (a rejection).

In terms of its relevance, the history shows that Ms C had reasonable grounds to believe that FDL continued to provide her with assistance in actioning her instructions for the SIPP. It is not clear why FDL continued to do so despite the absences of remuneration and a service related agreement with her, but the facts show that it did.

On balance, those facts – including FDL remaining as SL's contact for her SIPP (as is evident from SL continuing to send statements for her SIPP to FDL, annually and up to 2022) – were enough to justify her reliance on ongoing assistance from FDL for the aforementioned purpose. By 2017 she knew that ongoing assistance did not include advice, because there is evidence of FDL telling her in 2015 that it could not advise her.

Therefore, my consideration returns to the events of 2017 and FDL's actions, and/or inactions, in discharging the assistance she asked for in that year.

The regulator's *Handbook* includes Principles for Businesses that FDL will be familiar with, and that it would/should have been familiar with in 2017. Principles 2, 3 and 6 require, in broad terms, firms to conduct their services with due skill, care and diligence, to make reasonable efforts to manage and control their affairs responsibly and effectively, and to uphold their customers' interests and treat them fairly. Case law – Ouseley J, in R (British Bankers Association) v Financial Services Authority [2011] EWHC 999 (Admin) – also confirms that The Principles are ever present requirements that firms must comply with. Furthermore, the Conduct of Business Sourcebook ('COBS') section of the Handbook contains, at COBS 2.1.1R, the *client's best interests rule* which, as the title suggests, requires firms to uphold their clients' best interests.

The above broadly sums up, without being exhaustive, the regulatory context relevant to the present case. As the investigator explained to Ms C, the Consumer Duty related Principle that she cited applies to acts or omissions from 2023 onwards. Therefore, it does not apply to the facts of her complaint – which happened before 2023.

The ongoing role that FDL conducted for Ms C/her SIPP amounted to a form of assistance/service. This conclusion is inescapable. It actioned her liquidation instruction in 2015, it accepted and confirmed actioning/passing on to SL her investment instructions in 2017 and it continued to stand as recipient of the SIPP's annual statements throughout the relevant period. I remain mindful that it was not remunerated and that none of these were done as part of a service agreement with Ms C (because no such agreement existed), but as a simple matter of fact, these elements support the above conclusion.

They, and the conclusion, also mean that FDL's obligations under the Principles and the client's best interests rule were engaged. It had to uphold those obligations in the *assistance/service* it provided to Ms C.

However, the above does not mean there were also contractual obligations. There were not, and I explain why below. Due to its ongoing assistance to Ms C FDL was engaged in activities that enabled the liquidation of her investments (in 2015) and activities in which it undertook to enable the making of her investments (in 2017). These were regulated activities – or, at least, ancillary activities associated with regulated activities – so, in the course of conducting them, FDL's duties under the aforementioned Principles, and the client's best interests rule, were triggered.

There were no contractual obligations between the parties. Despite her arguments, Ms C was not owed any distinct service in which FDL was supposed to monitor her SIPP or keep it

under periodical review. There was no service arrangement or agreement between her and FDL. It is true that it continued to assist her when she made the requests for assistance that I have noted above, and I maintain that in discharging that assistance it was obliged to do so in the regulatory context summarised above. However, it is also true that, in the first instance, it was not obliged to provide any assistance at all.

Its confirmation, in 2015, that it could not advise Ms C was given within its refusal to meet her request for advice at the time. There is no evidence that she challenged its position, probably because she knew it was not responsible for giving her advice. If, in response to the 2017 requests, FDL refused to help, it is more likely (than not) that she would have had to accept that too.

Indeed, I am satisfied that its message to her in June that year – asking her to deal directly with SL (for which it provided her with SL's contact details and details of her SL account) – was clearly one that said it did not wish to assist her any further, and that she should engage directly with SL instead. This is a fair interpretation, in the absence of an alternative plausible interpretation. It is noteworthy that she does not appear to have resisted FDL's response at the time, again probably because she knew it was not obliged to assist with or action her investment instructions.

The problem was that until it conveyed this message to Ms C, after the 12 June 2017 request, it gave her the impression that it was prepared to assist her free of charge, when needed, because it had been doing so.

For the above reasons, FDL's liability is limited to how it discharged the responsibility it undertook in the 2017 instructions. It does not extend to any additional responsibilities that Ms C claims and that it did not undertake, because it had no responsibility to provide her with any service.

FDL expressly undertook responsibility to action the investment instructions on 2 and 8 May 2017, and it confirmed to Ms C that both instructions had been actioned. Evidence from SL to this service, and as obtained by Ms C, supports the conclusion that it conveyed neither of the instructions to SL. It is also a fact that the SIPP was never invested as she instructed on both dates.

Overall and on balance, this establishes FDL's responsibility for the unexecuted investments (specifically, those instructed on 2 and 8 May 2017) and the associated consequences – subject to the matter of mitigation, which I address below. The regulatory context summarised above applied from the point it undertook to assist with the instructions and continued to include its confirmation that it had conveyed the instructions to SL. Evidence that shows it did not convey the instructions to SL and apparently led Ms C to believe otherwise, confirms it breached the relevant Principles and did not uphold her best interests.

For the reasons I have already given, FDL did not undertake responsibility to action the instruction of 12 June. Instead it essentially declined to assist or have anything to do with the instruction. It directed Ms C to administer and manage her SIPP herself, and directly with SL. On balance, I can find no scope to conclude that she had reasonable grounds to expect any assistance with the instruction after FDL made this clear to her. Unlike the previous two instructions, FDL never issued any confirmation of action to her for the 12 June instruction.

She says the telephone conversation it requested in response to the 8 May instruction – and that never happened – did not stop it from confirming it had actioned the instruction, so she did not believe the same request in June would cause a hindrance. However, she had to chase FDL twice in May to obtain its confirmation of action, so this shows she was aware of the need for such confirmation. Having done so in May, she did not do the same in June. I

consider this was more likely (than not) because she understood from FDL's message – as I have treated above – that it was not going to take any action on the 12 June instruction and that it was left to her to resolve that herself.

For the above reasons, FDL's liability is limited to the unactioned instructions of 2 and 8 May 2017. Before moving on to the end date for FDL's liability and the matter of mitigation, I briefly confirm agreement with Ms C's points that her citizenship and profession are irrelevant to the complaint. Neither had anything to do with the straightforward matter of FDL actioning her investment instructions as it expressly undertook to do, as it claimed it had done, and in the aforementioned regulatory context.

There is evidence of the SIPP's annual statements for 2018, 2019, 2020, 2021 and 2022 being sent to FDL, but there is also evidence of them being sent by SL/Curtis Banks directly to Ms C at her home address (which was correctly set out in each statement). As the investigator noted, Ms C did not receive any confirmation of purchase from SL (directly or indirectly) in 2017. Therefore the 2018 statement provided her first opportunity to verify that the investments she instructed in May 2017 had been made.

I have considered the circumstances she has referred to as reasons why she disputes the finding that the 2018 statement would have given her notice that none of the investments had been made. I have done the same with regards to the two previous decisions from our service that she cited.

By her account for 2018, some of her absences from home included 12 days in February, four days in March, two days in April, 13 days in May, five days in June, eight days in July, 20 days in August, eight days in September, six days in November and 13 days in December.

The 2018 SIPP statement sent to Ms C is dated 2 February. Her absence from home in that month did not begin until 10 February. I have not seen grounds to conclude that the statement was not, or was unlikely to have been, delivered to her during the eight days in between, and/or that there was a delay in sending it to her. On balance, the opposites were more likely. These types of statements are reporting based documents, which are often dispatched through an automated system on the date(s) stated. The statement to FDL was sent on the same date, 2 February, and it refers to the statement directly sent to Ms C.

Overall and on balance, it is more likely that the statement was sent and delivered to Ms C's home before her absence from home began on 10 February. I note the issues with post security she has referred to, but I do not consider that there are grounds to safely conclude that the statement was interfered with at or around her home. The *possibility* of such interference is not enough to make that conclusion. It is more likely (than not) that the February SIPP statement was delivered to and received by her.

I also note the personal problems she was facing at the time. I empathise with what she has described. Due to the private/personal nature of those problems I will not disclose them in this decision. I do not have cause to do so. I do not doubt the impact she has described. However, it is also her evidence that, despite the circumstances at the time, she continued to function professionally. This means she ought reasonably to have also been able to function in managing her personal affairs, including the SIPP.

Even if the SIPP statement was not an *immediate* priority for her, because other things were happening and because of what would have been her impending departure from home on 10 February, by her description she returned home on 19 February and remained until she had to leave again on 28 February. If she had not attended to the statement before 10 February, she had around 10 days to do that from her return on 19 February, and should have done

so.

A matter as relatively important as verification of investments in her pension – investments that had not been confirmed (as completed) over the nine months since her instructions – should have carried weight. Enough weight to demand her attention within the month of February 2018. It follows that, as the investigator found and given the probability that she had received the statement in the early part of that month, she should have been in a position to mitigate by 1 March 2018.

I have read the two previous decisions from this service that Ms C has referred to. It should be noted that we address each complaint individually and on its own merits, so previous decisions do not automatically create binding precedent. However, we seek to maintain consistency in our decisions, and I have considered the two cited decisions in this context. Having done so, neither persuades me to change my finding on the February 2018 SIPP statement.

The first relates to an unactioned investment instruction and includes an argument that the complainant should have been aware of the uninvested cash holding shown in a particular SIPP statement. The investigator did not consider that the statement was enough to amount to such awareness. The Ombudsman agreed with that conclusion and with the reasoning behind it. The reasoning was based on the respondent's advisory service to the complainant continuing at the point the statement was issued, and on the finding that the respondent should have advised the complainant (at that point) that the previously instructed investment had not happened.

The obvious difference in Ms C's case is that there was no advisory service from FDL. The decision in the above case focused on the respondent's primary responsibility, as adviser, to inform the complainant that the investment had not been made. There are no grounds for an approach like that in the present case, because FDL did not have responsibility to advice or to monitor the SIPP and then advise on what investment had or had not been made. Furthermore, after the 12 June instruction it had nothing to do with the SIPP, so there was no scope for it to have acted in the way expected of the respondent in the above complaint. Ms C and her SIPP were on their own after 12 June 2017, and it was left to her to monitor the SIPP herself, inclusive of verifying the May 2017 investment instructions in the February 2018 statement.

The second decision features a similar, but extended focus, whereby the respondent firm was deemed responsible for the monitoring, periodic reviews and even management of the SIPP in the complaint. The arguments drawn from the decision, by Ms C, also relate to her claim that FDL was obliged to monitor/review her SIPP. I have already found, with reasons, why that was not the case. With regards to the matter of awareness, the facts and findings in the second decision are not comparable to Ms C's. FDL had no monitoring, reviewing or management obligations towards her or her SIPP. As I said above, it was left to her alone to verify that the May 2017 investment instructions had been completed, and she should have done that, at the latest, in her consideration of the February 2018 SIPP statement.

I have also considered her caselaw based argument on mitigation. The finding she highlights in the case's judgment is compatible with the approach our service has taken towards mitigation in her case. In saying she should have mitigated her position by 1 March 2018, I am also saying that she should have avoided losses (or continuing losses) from that point onwards and that it was/is unreasonable for her not to have done so. The awareness she ought reasonably to have had at the time, her ability to invest the SIPP and, therefore, her ability to correct the uninvested state of the SIPP meant/means losses thereafter were avoidable.

Putting things right

Fair compensation

My aim is to put Ms C as close as possible to the position she would now be in if FDL had actioned her instructions of 2 May 2017 and 8 May 2017. I am satisfied that what I have set out below, to redress her financial loss, broadly achieves this.

The findings above explain FDL's role in handling the instructions and its responsibility for what it undertook to do with them and what it confirmed it had done with them. It confirmed they had been actioned by being conveyed to SL, so Ms C's expectation was that SL would have proceeded to make the specified investments – those that FDL confirmed it had conveyed to SL

For the 2 May instruction, FDL confirmed it had conveyed, to SL, her instruction to invest £5,000 each into the following – Allergan; Enterprise Product Partners EPD; Pfizer; and HSBC GIF Asian Ex Japan Equity Smaller Companies Fund. [*the* '*A*' *investments*]

For the 8 May instruction, FDL confirmed it had conveyed, to SL, her instruction to invest £5,000 each into the following – Apple; Berkshire Hathaway; McDonalds; Kraft Heinz; and Google. [*the* '*B*' *investments*]

Ms C's early complaint submissions, as made by her previous solicitors, asserted that SL had quoted to her a three days service standard for her type of instructions. The investigator's view assumed execution/completion six working days after each instruction. I prefer the assumption in the view. Six working days allows reasonable time for FDL to have conveyed and followed up each instruction, and then for SL to have executed/completed each instruction.

Therefore, the start date for calculation of redress for each set of investments is six working days after the date Ms C issued each respective instruction. The end date for the calculations, as addressed in the previous section, is 1 March 2018.

As set out below, I endorse FDL's offer of £500 to Ms C, and I order its payment in addition to redress for financial loss.

I do not uphold Ms C's claim for compensation to cover the legal fees she incurred earlier in her pursuit of the complaint. My reasons are similar to those given by the investigator. The case is about three unactioned investment instructions. There are no complexities within it. The main contacts between the parties were documented. They have been evidenced and they set out what happened.

I note Ms C's argument about FDL's expertise as a regulated firm in the industry and about her perception of an imbalance of capabilities between it and her, but I am not persuaded by it. There are no difficult technical aspects in her case that would have put her at a disadvantage in pursuing it without legal representation. I accept that such representation offers valuable professional assistance, but the point is that it was/is not necessary for her case. Our service has an inquisitorial remit, which allows us to investigate into complaints and to follow lines of enquiry required to fairly determine them, sometimes extending to enquiries that parties might not have previously made.

Overall, and for the above reasons, I am satisfied that Ms C did not need to incur the legal costs she has referred to. Our service does not automatically award costs in complaints that are upheld so, also for the above reasons, I do not find grounds to make such an award in her case.

What must FDL do?

To compensate Ms C fairly, FDL must do the following:

- Calculate the number of shares/units that would have been purchased in the A investments (as defined above), using the start date for these investments as defined above. The result is '*C*'.

- Calculate the number of shares that would have been purchased in the B investments (as defined above), using the start date for these investments as defined above. The result is '*D*'.

- Calculate the number of shares/units that would have been purchased in the A investments (as defined above), using the end date as defined above. The result is '*E*'.

- Calculate the number of shares that would have been purchased in the B investments (as defined above), using the end date as defined above. The result is '*F*'

- If E is greater than C, no compensation is due because there would be no financial loss – Ms C could have bought more shares/units on the end date than she could on the start date. If C is greater than E, calculate the difference. The difference is a financial loss because it shows that Ms C could have bought more shares/units on the start date, when they should have been bought, than on the end date. A current value should be placed on this difference, which should also allow for any dividends that would have been paid over the relevant calculation period. The result is '*G*'.

- If F is greater than D, no compensation is due because there would be no financial loss – Ms C could have bought more shares on the end date than she could on the start date. If D is greater than F, calculate the difference. The difference is a financial loss because it shows that Ms C could have bought more shares on the start date, when they should have been bought, than on the end date. A current value should be placed on this difference, which should also allow for any dividends that would have been paid over the relevant calculation period. The result is '*H*'.

- The combined total of the current values of G and H is '*the compensation*' for financial loss that is due, and must be paid by FDL, to Ms C. Payment should be settled within 28 days of FDL being informed that Ms C has accepted this decision. Interest on the compensation will apply at the rate of 8% simple per year, from the date of this decision to the date of settlement, if payment is not settled within the aforementioned 28 days. In the event of delayed settlement, the interest is to compensate Ms C for being deprived the compensation during the delay.

- Pay the compensation into Ms C'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. The compensation should not be paid into her pension plan if it would conflict with any existing protection or allowance. If the compensation (and interest) cannot be paid into her pension plan, pay it directly to her. Had it been possible to pay it into the plan, it would have provided a taxable income, so the compensation should be reduced to *notionally* allow for any income tax that would otherwise have been paid. The *notional* allowance should be calculated using her actual or expected marginal rate of tax at her selected

retirement age. For example, if she is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal the current basic rate of tax. If she would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation.

- Pay Ms C £500 as FDL has offered to her. FDL says the offer has been made because it could have communicated with Ms C better. I consider that the £500 also covers the trouble and inconvenience caused to her in the complaint. This arises from the distress she would have experienced after discovering that her SIPP remained uninvested despite having previously been told by FDL that her first two investment instructions had been actioned. This is distinct from compensation for financial loss, which is addressed separately above, and the £500 payment would be a fair amount to compensate for such distress.

- Provide the calculation of the compensation to Ms C in a clear and simple format.

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £150,000, £160,000, £350,000, £355,000, £375,000 or £415,000 (depending on when the complaint event occurred and when the complaint was referred to us) plus any interest that I consider appropriate. If fair compensation exceeds the compensation limit the respondent firm may be asked to pay the balance. Payment of such balance is not part of my determination or award. It is not binding on the respondent firm and it is unlikely that a complainant can accept my decision and go to court to ask for such balance. A complainant may therefore want to consider getting independent legal advice in this respect before deciding whether to accept the decision. In Ms C's case, the complaint event occurred before 1 April 2019 and the complaint was referred to us after 1 April 2023, so the applicable compensation limit would be £190,000.

My final decision

For the reasons given above, I uphold Ms C's complaint. I order Foster Denovo Limited to calculate and pay her compensation for financial loss and for trouble and inconvenience as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 3 June 2024.

Roy Kuku
Ombudsman