DRN-4813749

The complaint

Ms C is represented. She says an Appointed Representative ('AR') of Sesame Limited ('SL') gave her unsuitable advice to transfer two Co-Operative Group ('Co-Op') Personal Pensions ('PPs') into a Self-Invested Personal Pension ('SIPP') provided by London and Colonial, and to invest the SIPP in a The Resort Group ('TRG') property development fund.

Ms C also has a complaint against London and Colonial, which is being addressed separately. This decision is only about her complaint against SL.

Ms C and her representative say mainly as follows – there is a lack of documentation to support the advice; the SIPP was established to accommodate the TRG investment; the SIPP had high charges; the PPs' transfer value was insufficient to justify the transfer, given the effect of charges (including excessive initial charges); a stakeholder scheme would have been a suitable alternative to the SIPP; the TRG fund was high risk and unsuitable for her inexperienced investor profile; and the SIPP lacked diversification.

SL disputes the complaint and, primarily, it says the complaint – made in July 2022 – is out of time and outside our jurisdiction.

What happened

I issued a Provisional Decision ('PD') for this complaint on 16 May 2024 and the PD explained the reasons as follows –

"*Based on what I have considered, my conclusion is the same as the investigator's but I have referred to some additional evidence*."

"*The findings and conclusion in this decision are essentially the same as the investigator expressed. The main reason this has been issued as Provisional Decision is because it is not clear the extent to which SL is aware of available evidence from the other complaint file, and some of that evidence has informed my findings. SL can therefore use the aforementioned opportunity to query any such evidence it wishes to*."

Both parties were invited to comment on the PD, and they both confirmed they had no comments to make.

The PD's summary of the complaint's background included the following –

"*There is evidence from the file for the London and Colonial related complaint that shows advice and/or arrangements for the pension transfer and TRG investment began in December 2011 and continued into January 2012.*

SL referred to the following events – completion of the pension transfer in March 2012; the TRG investment, in the SIPP, in April 2012; communication (along with the SIPP's annual statement) from London and Colonial to Ms C in July 2014, in which it referred to the TRG fund being illiquid, producing no income and to a lack of cash in the SIPP to cover its annual charges; annual statements for the SIPP between 2016 and 2018 showing a drop in value of

around 24%; stoppage of income from the fund in 2015; and then resumed but sporadic income from 2017 onwards.

SL says the complaint was made more than six years after the complaint event, so it is outside the six years time limit.

With regards to the three years time limit for complaints, it says the events from 2014 onwards, leading up to the loss of value in 2018, ought reasonably to have made Ms C aware of cause for complaint in 2018 (at the latest) – so the deadline for the complaint was in 2021 and her 2022 complaint is out of time. It says this conclusion is supported by her claims that she was advised the SIPP was a better, safer and liquid pension arrangement for her, because the events between 2014 and 2018 should have made her question that advice. SL also notes that she says she became aware of cause to complain from mis-selling related adverts in the press in May 2021, but it argues that those adverts had begun to appear around 2018/2019."

"*The investigator concluded that the complaint is not out of time.*

SL disagreed and maintained its dispute. It accepts that it was possible Ms C did not receive statements from 2015 onwards because she changed her address several times, but it retains the argument that the 2014 notice was enough to give her awareness of cause for complaint.

The investigator addressed the matter further, but did not change his view. He highlighted that the 2014 notice was wrong about the SIPP fees, because the SIPP's annual fees for 2013 had been paid, and annual interest income from the TRG fund of around £900 was being received in the SIPP, which was in excess of the annual fees of £564. Therefore, he found, there were regular income receipts in the SIPP at the time to cover its fees.

With regards to the fund's illiquidity, he explained that the SIPP's value had increased slightly between 2013 and 2014 so this would have been reassuring to Ms C, that she was around 15 years away from her retirement date and the earliest she could take early retirement was five years away, and adding these factors to her medium risk profile and the returns she was receiving in the form of interest payments from the fund, the 2014 notice would not have given her concern about receiving income in retirement."

"*With regards to the merits of the complaint, the investigator mainly found as follows – SL has been unable to provide documentation from the point of advice, so he has relied on information disclosed from and as part of the wider complaint; the PP's transfer value was £36,600 and Ms C's annual salary at the time was £10,000; she believes she was a medium risk investor at the time and had no other pension provision; a benefit of the transfer to the SIPP cannot be seen; such transfers are commonly recommended to enable the underlying investment; in this respect, the TRG fund was unregulated, high risk and extremely specialist; there were relevant regulatory alerts in 2010 and 2013, the first warning about the unsuitability of investing 100% of a portfolio in unregulated funds and the second warning against the practice of advisers assessing suitability of a SIPP in isolation without doing the same to the proposed underlying investment (which they are obliged to do); overall and for all these reasons, the TRG fund was unsuitable, as was the SIPP*."

The PD's findings were as follows –

"*<u>Jurisdiction</u>*

The Dispute Resolution ('DISP') section of the regulator's Handbook sets out the rules for our jurisdiction. With regards to time limits, those rules say we cannot consider a complaint

referred more than six years after the event or (if later) more than three years after the complainant knew or ought reasonably to have known there was cause to complain – unless the complainant has written (or some other) record that shows a complaint was received in time. A late complaint can be considered if exceptional circumstances caused its delay.

No written (or other) record of a complaint, earlier than the 2022 complaint, exists. The pension transfer and TRG fund investment events all happened in 2012, so these complaint related events happened more than six years before the complaint. As I said above, the advice and/or arrangements leading to both of these events began in December 2011 and continued into January 2012. Therefore, and overall, the 2022 complaint is outside the six years time limit.

With regards to the three years time limit, I agree with the investigator's finding that the complaint is not time barred on this basis. I also agree that the events SL has cited to support its argument do not establish that Ms C was or ought reasonably to have been aware of cause for complaint at the time(s) it has referred to.

I am satisfied with evidence about the changes in Ms C's address between 2015 and 2018. I have also noted the personal circumstances in her life at the time that explains why she had to change her residences. The same, outdated, address was used for the annual SIPP statements sent to her between 2016 and 2018. The address did not match any of the addresses she had moved on to, so I consider that she did not receive the statements. For this reason, it can be reasonably concluded that she was unaware of the loss of value in 2018 that SL has argued about. Without such knowledge, that could not have made her aware of cause for complaint. The same applies, for the same reason, to the sporadic interest payments from 2017 onwards.

It appears that statements after 2018 are unavailable. I have checked our file for the complaint against London and Colonial and only the statements for the period up to 2018 have been disclosed to us – as is the case in the present complaint. Therefore, I do not have grounds to find that the statements thereafter were sent to Ms C at her correct address or that such statements made her aware of the loss of value and sporadic interest payments.

The 2015 statement was sent in February that year, and it appears that this could have happened before Ms C moved away from the relevant address, so it is likely she received it. It showed that interest payments from the TRG fund investment were up-to-date and continued to be received up to January 2015, so it presented no cause for concern in this respect. It is the 2016 statement that shows the payments had stopped after the interest paid in March 2015, but as stated above, and for the reason given above, Ms C did not receive this statement. As such, she was unaware that the interest payments had stopped at the time. In other words, it cannot reasonably be said that the 2015 interest payment stoppage should have made her aware of cause for complaint.

Ms C would have been aware of the notice in the covering letter for the July 2014 statement. It confirmed that the TRG fund was illiquid, that it would not be producing income and that the SIPP's fees would be uncovered. As the investigator said, the latter two appear to have been inaccurate, because both the 2015 and 2016 statements show that the SIPP continued to receive interest payments from the fund until March 2015 and there continued to be enough cash in the SIPP up to 2016 (and beyond) to cover its annual fees. The 2014 statement showed that the SIPP had a cash balance of over £5,000, so Ms C could have reasonably calculated that the annual fee of £564 was well covered at the time and for some years into the future.

With regards to news of the fund's illiquidity, I echo and endorse the investigator's main findings. The news was negative, but it stood in the context that he highlighted. Ms C had a

medium risk profile, there was confirmation in the statement that the SIPP retained good, and slightly increased, value, her retirement date (and the point at which she would need retirement income) was around 15 years away and I have not seen evidence that she sought to draw from the SIPP (or use a cash withdrawal from the SIPP) imminently at the time or in the foreseeable future.

These factors would have meant she was unlikely to be panicked by the 2014 statement. Furthermore, it is noteworthy that the 2015 statement's covering letter made no mention of the TRG fund's illiquidity, stoppage of income or insufficient cash to cover the SIPP's fees. To the contrary, the statement itself showed a broadly unchanged SIPP value, a definitive value for the TRG fund holding (which was also unchanged), confirmation of consistent interest payment receipts between February 2014 and January 2015, full payment of the SIPP's annual fees, and a cash balance of around £5,500.

I note SL's argument about Ms C's claim that the recommendation was sold to her as a better, safer and liquid pension solution, and about how this should have meant the 2014 illiquidity news was cause for her to complain. However, in the overall context that existed between 2014 and 2015 – as summarised above and as she would have been informed of by the statements she received in both years – I disagree. I consider it more likely (than not) that seeing ongoing (and slightly increased) good value in her SIPP in 2014 would have reassured her, and then seeing the same in 2015 (with no news about the illiquidity problem continuing) along with ongoing interest payment receipts and a healthy cash balance would have reassured her even more – perhaps to the extent of believing that the illiquidity issue had been resolved (in the absence of notice that it continued).

It is not uncommon for complainants to be prompted to pursue their complaints by adverts about making claims for mis-sold financial products. Such adverts can make them think of the products they have, can lead them to taking advice on suitability and such advice can then lead to, or confirm, their awareness of cause(s) for complaints.

This is what Ms C essentially says happened in her case, and I have not seen evidence to doubt what she has said. I accept that her journey towards awareness of cause for complaint began when she saw the advert in the press she has referred to and continued to the advice she sought and received from her representative – both of which happened in 2021. For the reasons already addressed above, I do not find that she ought reasonably to have known of cause for complaint earlier. Her 2022 complaint happened within three years of this awareness, so her complaint was made inside the three years time limit. It has been made in time and it is in our jurisdiction.

<u>Merits</u>

As I mentioned earlier, the investigator gave and repeated notice to SL that referral of the complaint to an Ombudsman would likely result in jurisdiction and merits being considered together, and that it should make any final submissions it might have on merits. It was reminded of this around a month ago, but no final submissions from SL appear to have been received. I consider that it has had ample opportunity to make those submissions. It is in the interests of both parties that a conclusion to the complaint is not unduly delayed, so I will proceed to make findings on merit in this decision. However, as this is a Provisional Decision, SL has yet another (and a final) opportunity during the period for comments I referred to at the outset, to make such submissions.

The findings and conclusion in this decision are essentially the same as the investigator expressed. The main reason this has been issued as Provisional Decision is because it is not clear the extent to which SL is aware of available evidence from the other complaint file, and some of that evidence has informed my findings. SL can therefore use the

aforementioned opportunity to query any such evidence it wishes to.

SL has been unable to provide us with its AR's point of advice documentation/file. The regulator's register says it ceased to be principal for the AR in June 2013, so the passage of time since then could explain why.

As stated earlier, I have looked at our file for the complaint against London and Colonial. Given that it (London and Colonial) did not recommend the pension transfer or TRG fund investment, no advice related documentation or evidence exists there. Ms C and her representative have given helpful details about the circumstances leading to and surrounding the AR's advice to her, and there is information/documents (especially from the file for the other complaint) about the application process for the SIPP, details of the SIPP and information about the TRG fund (and its holding in the SIPP).

Overall, I am satisfied that there is enough information to determine the merits of the complaint.

The main questions are – was there a need and/or justification for the pension transfer?; if so, was the SIPP a suitable solution?; if so, was the SIPP suitably invested (including suitability of the TRG fund)?; is SL responsible for advice to Ms C in all these respects?

I address the last question first.

There is no available point of advice/arrangement file. However, the SIPP application form, completed in December 2011, confirms that the AR was Ms C's Independent Financial Adviser ('IFA') at the time. The same section in which the AR is confirmed as her IFA includes a part in which the statement "Advice not given at point of sale to client" is ticked. This part refers to an appendix that Ms C was required to complete if the statement was ticked. I have considered the appendix in order to determine whether (or not) the ticked statement casts doubt over confirmation of the AR as her adviser.

The appendix clarifies that the statement did not apply to the AR as IFA for the application, instead it applied to London and Colonial. The undertakings she signed in the appendix say –

"… apart from factual information relating directly to the Open Pension, I have not sought or been given any advice from the Provider, London and Colonial Assurance Plc, or from the Trustee or Scheme Administrator, London and Colonial Services Ltd …"

and

"I understand and agree that neither the Provider nor the Trustee nor the Scheme Administrator has any liability to me with regard to the suitability of an Open Pension in my circumstances or with regard to the suitability of or risks associated with any of the investments that I request to be made."

I am satisfied that the application form confirms the AR as the firm who stood as Ms C's IFA in the SIPP application process and, by implication (and despite the absence of an advice file), the firm that advised her to conduct the pension transfer to the SIPP. It is also noteworthy that confirmation of the transfer's completion was sent, by London and Colonial, to the AR, so the AR's IFA role continued up to that point.

The form says that the AR's advice fees were not paid out of the SIPP, which would suggest they were paid separately/directly by Ms C at the time. Unfortunately, the absence of a point of advice file means this cannot be verified, but on balance, it is safe to conclude that the AR

would not have given its advice free of charge, so there would have been separate remuneration for that.

The application form, itself, does not mention the TRG fund investment. However, the covering letter (attached to the form) submitted to London and Colonial does. The covering letter is not from the AR firm. It is from the same individual adviser stated as IFA (under the AR firm), but it is written on letterhead paper belonging to a different (and unregulated firm). I have not seen evidence to explain this, and such evidence seems unlikely to be available, given the absence of a point of advice file. Overall and on balance, I consider that this aspect does not call into question the AR's role as IFA for the pension transfer, because the form sufficiently confirms that role, and I am further persuaded that the letter – from the same individual adviser who stood as IFA – also confirms that the AR had a role in selecting the TRG fund for the SIPP.

The letter says –

"I refer to the above client and enclose the relevant paperwork to enable them to transfer their benefits to London and Colonial in order to fund a property purchase with The Resort Group.

These pension funds are part of a divorce settlement and we have confirmed with the ceding schemes at C.I.S. that the enclosed paperwork signed by the client is sufficient to enable the transfers."

This shows it is more likely (than not) that the individual adviser recommended the pension transfer to Ms C for the purpose of enabling the TRG fund investment (as stated in the quote above). Available evidence shows that she was a lay person with a personal profile distinctly remote to investments and pensions. She would not have been in the position to know about and/or initiate the arrangement of a pension transfer to facilitate an unregulated overseas property development investment (which is what the TRG fund was).

The contents of the individual adviser's covering letter, as quoted above, appear to be enough to conclude that he probably advised her on both the pension transfer and the TRG fund investments, and on the need to execute the former in order to facilitate the latter. Even if SL were to argue that the letter does not connect the AR firm, specifically, to advice on the TRG fund investment, the application form connects the AR firm to the pension transfer advice and the covering letter confirms that the same individual adviser (from the AR firm) was aware of the intended TRG fund investment. That means the AR firm was equally aware of the intended investment, so, for reasons that the investigator gave and that I will address further below, the AR retained responsibility for its suitability.

Having established the AR's/SL's responsibility for the pension transfer advice, I turn to the first two questions noted above – was the transfer justified and, if so, was the SIPP a suitable solution?

As stated in the quote above, there was a divorce settlement related to the pension transfer. Ms C's evidence is that she sought advice from the AR on the pension sharing order that arose from that settlement, and that her objective was just to have the pension incoming from the settlement in her name. It appears that the order applied to one of the two transferred PPs, and that the other PP was already hers. There is documentary evidence from the Co-Op confirming the pension sharing order and the PP to which it applied.

There is no evidence to show that Ms C sought to self-manage her pension. The application form confirms that she did not. There is also no evidence that she had an ongoing advisory or management arrangement with the AR – or with anyone else. With regards to the latter,

there is a part of the application form that states an 'investment manager' as being the same individual adviser from the AR firm (but stated under the unregulated third-party firm). However, this part is also crossed out, so the implication is that no investment manager was set up for the SIPP.

Ms C was not in a position to self-manage the SIPP, she appears to have had no ongoing advice service set up for it and no investment management set up for it. In these circumstances, the transfer to the SIPP was not suitable. Like the investigator, I too cannot see the benefit, to Ms C, derived from the transfer to the SIPP.

The main, or only, purpose for the transfer was to enable the TRG investment. In other words, this could have been what Ms C was told she would benefit from the transfer, but I do not consider it was a benefit. The facts that she was not in a position to self-manage the SIPP and had no arrangement in place to do that (or to oversee or monitor investment in the SIPP) was made no better by the purpose of investing in the TRG fund. Indeed, that purpose made her position worse, because she was taking on a SIPP that was wholly (but for a minority cash holding) invested in an overseas, high risk, complex and unregulated fund – as was the TRG fund (with evidence from the other complaint file supporting this conclusion) – without ongoing professional assistance and without the expertise or experience to manage it herself.

The high risk fund mismatched her medium risk profile and, as her representative argues, it rendered the SIPP without diversification. I echo the investigator's reference to the regulator's 2010 report which essentially warned firms against the unsuitable practice of over exposing retail clients' portfolios to unregulated investments. In the present case, but for the minority cash holding Ms C's SIPP was wholly invested in the unregulated TRG fund. The entire pursuit also went distinctly and significantly beyond what appears to have been her relatively simple objective at the time, which was to put the incoming PP (from the pension sharing order) in her name. Therefore, it mismatched her objective too.

For the above reasons, I do not find that the pension transfer to the SIPP was justified and I do not find that it was suitable.

The regulator's Principles for Businesses, at Principle 6, requires a firm to pay due regard to the interests of its customers and treat them fairly. This is partly echoed in the regulator's Conduct of Business ('COBS') rules, at COBS 2.1.1R, which requires a firm to act honestly, fairly and professionally in accordance with the best interests of its clients and in relation to designated investment business carried on for a retail client. These regulatory provisions are directly relevant to a firm's responsibility for the suitability of its recommendations. They are also relevant to a firm's recommendation of solutions to a client.

The AR's recommendation of the transfer to the SIPP either did or did not include recommendation of the TRG investment. I have given reasons above why I consider, on balance, that it did. Even if it did not, there is evidence that the AR was aware that the transfer was for the purpose of making the investment. Whether or not it recommended the investment, it remained a requirement for the AR – under the above provisions – to ensure that the transfer did not put Ms C in a position that harmed her interests or best interests.

Knowingly advising and assisting her to complete a pension transfer designed to enable a high risk, overseas, unregulated investment that she was not equipped to self-manage and had no management, ongoing advice or monitoring arrangement for amounted to the exact opposite. The AR was knowingly putting her in a position that was likely to be harmful to her interests. In such circumstances, the AR should have advised her against the transfer. Instead, it did the opposite, it advised the transfer and assisted her through it.

As the investigator said, in 2013 the regulator also warned against the ongoing practice it had seen, in which firms advised on transfers in isolation and ignored the unregulated investments (that they were aware of) intended for the SIPP post-transfer. The regulator said such practice was wrong and that "… 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". I appreciate that this warning happened after the AR's advice to Ms C, but it did not declare anything new. Instead, it restated, and reminded firms of, the expectation upon them that previously existed, so that expectation existed upon the AR at the time of its advice to Ms C too.

For the above reasons, even if the AR did not recommend the TRG fund investment, it holds responsibility for failure to advise her against it and/or against the pension transfer that was intended to facilitate it.

For all the reasons given above, I provisionally uphold Ms C's 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.

Having done so and given that neither party has made any comments on the PD, I do not find cause to depart from the findings and conclusions in the PD. I retain those findings and conclusions and I incorporate them into this decision.

We have jurisdiction to address Ms C's complaint and her complaint is upheld – both conclusions based on the reasons set out in the PD (and as quoted above).

The PD disclosed to the parties the redress provisions I intended to make in the final decision, should the PD's findings and conclusions be retained. As they have been retained, I do the same with the redress provisions I previously disclosed, and they will be set out in the next section.

Putting things right

Fair compensation

In assessing what would be fair compensation, my aim is to put Ms C as close as possible to the position she would probably now be in if she had been given suitable advice. I think she would have invested differently. It is not possible to say precisely what she would have done, but I am satisfied that what I have set out below is fair and reasonable given her circumstances at the time of advice.

What must SL do?

To compensate Ms C fairly SL must:

- Compare the performance of the investment stated in the table below with that of the benchmark in the table. If the fair value is greater than the actual value, there is a loss and compensation is payable. If the actual value is greater than the fair value, no compensation is payable. If the fair value is greater than the actual value, there is a loss and compensation is payable to Ms C.

- Add any interest set out below to the compensation payable.

- If there is a loss, pay 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. Do not pay the compensation into the pension plan if it would conflict with any existing protection or allowance. If you are unable to pay the compensation into her pension plan, pay that amount direct to her. Had it been possible to pay into the plan, it would have 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 is not a payment of tax to HMRC, so Ms C would not be able to reclaim any of the reduction after compensation is paid.

- The notional allowance should be calculated using Ms C's actual or expected marginal rate of tax at her selected retirement age. It is reasonable to assume that she is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if she would have 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, pay Ms C £250 for the trouble and distress caused to her due to the unsuitable advice. Given the circumstances of her case, especially the manner in which she was led into a SIPP and investment arrangement that was unwarranted, unsuitable and that she was not equipped for, she is likely to have faced such trouble and distress upon the realisation of her situation and of the need to address it. I consider that this award fairly compensates her for that.

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

investment name	status	benchmark	from ("start date")	to ("end date")	additional interest
Ms C's London and Colonial SIPP	Part liquid, part illiquid	FTSE UK Private Investors Income Total Return Index (prior to 1 March 2017, the FTSE WMA Stock Market Income Total Return Index)	Date of transfer	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, any investment in the portfolio is illiquid (meaning it cannot be readily sold on the open market), it may be difficult to find the actual value of the portfolio. SL should take ownership of any illiquid investments within the portfolio by paying a commercial value acceptable to the pension provider. This amount should be included in the actual value before compensation is calculated.

If SL is unable to purchase any illiquid investment the value of that investment should be assumed to be nil when arriving at the actual value of the portfolio. SL may require that Ms C provides an undertaking to repay any amount she may receive from that investment in the future. The undertaking must allow for any tax and charges that would

be incurred on drawing the receipt from the pension plan. SL will need to meet any costs in drawing up the undertaking.

Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

Any additional sum paid into the investment should be added to the fair value calculation from the point in time when it was actually paid in. Any withdrawal from the investment should be deducted from the fair value calculation 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 will accept if SL totals all those payments and deduct that figure at the end to determine the fair value, instead of deducting periodically.

Future of the SIPP

There now appears to be insufficient cash in the SIPP to cover its ongoing fees. The SIPP only exists because of the illiquid assets in it. In order for it to be closed and further fees that are charged to be avoided, those investments need to be removed. My order above sets out how this might be achieved by SL taking over those assets. However, I do not know if that will be possible or, if it is possible, how long that will take.

Third parties are involved and we do not have the power to tell them what to do. If SL is unable to purchase the portfolio, to provide certainty to all parties it is fair that SL pays Ms C an upfront lump sum equivalent to five years' worth of SIPP fees (calculated using the fee rates in the previous year to date). This should provide a reasonable period for the parties to arrange for the SIPP to be closed.

Why is this remedy suitable?

I have chosen the benchmark in the table above because:

- Ms C had a medium risk profile at the time of advice.

- 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. Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of the returns Ms C could have had if she had been suitably advised.

Compensation Limits

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, £170,000, £190,000, £195,000, £350,000, £355,000, £375,000, £415,000 or £430,000 (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 (but before 1 April 2024), so the applicable compensation limit would be £190,000.

decision and award

I uphold Ms C's complaint on the grounds stated above. Fair compensation must be calculated and paid to her, by SL, as I have also stated above, up to the relevant compensation limit.

recommendation

If the amount produced by the calculation of fair compensation is more than the relevant compensation limit, I recommend that SL pays Ms C the balance. This recommendation is not part of my determination or award. SL does not have to do what I recommend.

My final decision

For the reasons given above, I uphold Ms C's complaint and I order Sesame Limited to calculate and pay her the compensation 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 20 June 2024.

Roy Kuku
Ombudsman