DRN-4832081

The complaint

Mr L complains Morgan Lloyd SIPP Services Limited ('ML') failed to carry out sufficient due diligence on the investments it allowed him to hold within his ML self-invested personal pension ('SIPP'), that it wasn't proactive when things started to go wrong with the investments, and it wrongly allowed him to invest in so many high risk investments. He says ML's failures caused him a financial loss and it should compensate him.

What happened

I've outlined the key parties involved in Mr L's complaint below.

Morgan Lloyd SIPP Services Limited ('ML')

ML is a regulated SIPP provider and administrator. At the time of these events, ML was regulated by the Financial Conduct Authority ('FCA'). ML was authorised in relation to SIPPs, to arrange (bring about) deals in investments, to deal in investments as principal, to establish, operate or wind-up a personal pension scheme, and to make arrangements with a view to transactions in investments.

'Firm S Limited' and 'Firm B'

ML says it understood Firm S Limited's primary purpose to be a forum for knowledgeable investors to obtain and share information regarding SIPP products, including the introduction of certain investment opportunities.

It's important to differentiate between 'Firm S *Limited'* (an unregulated business) and the almost identically named 'Firm S' as a trading style of Firm B – Firm B was at that time an FCA regulated financial adviser and Firm S was a trading style of Firm B between 15 September 2017 and 15 September 2021.

ML says it entered an introducer agreement on 16 February 2018, but an administrative error meant this referred to Firm S Limited, rather than Firm S as a trading style of Firm B as was intended. ML says all parties nonetheless understood that the source of introductions was Firm S as a trading style of Firm B, and not Firm S Limited, and the agreement was corrected in around September 2020.

ML says the introducer agreement was terminated on 12 May 2021 after a winding up order was issued (albeit later rescinded) against Firm B – it says the questions this raised within ML, coupled with the SIPP market continuing to tighten regarding due diligence and with professional indemnity insurance cover issues, resulted in ML deciding not to accept further introductions.

Firm B applied to cancel its FCA authorisation in November 2023 and is in liquidation.

Mr L's dealings with Firm S Limited and ML

In early 2015, Mr L was in contact with Firm S Limited. He's provided copies of emails from this time which seem to relate to the SIPP it appears he opened around then with a firm I'll call Provider G. In these emails, Mr L and Firm S Limited discussed his options for transferring his existing peer-to-peer lending ('P2P') investments with 'Platform RS' into his SIPP. And Firm S Limited pointed to a list of 'approved' P2P lenders on its website and said more were going through 'due diligence' (though it didn't say who was doing this due diligence).

In February 2018, Mr L emailed Firm S Limited asking it to 'point him in the right direction'. He said he had a defined benefit ('DB') pension with an estimated value of £880,000, and was talking to an independent financial adviser about his plan, which was to:

- Transfer his DB scheme benefits to his Provider G SIPP.
- Maintain the current level of P2P investments within his Provider G SIPP, but perhaps add selected additional P2P investments to it.
- Invest much of the £880,000 transferred into selected standard investments, including a new company his sister planned to set up.
- Take a large tax free cash ('TFC') lump sum to invest as he chose as *"I currently hold about a dozen P2P accounts outside of my SIPP".*

Firm S Limited emailed ML, saying Mr L's P2P aspirations were being 'throttled' by Provider G, as it now only accepted one particular P2P platform in its SIPPs. But that Mr L was a very experienced P2P investor and his requirements meant he was interested in a SIPP or a small self-administered scheme ('SSAS') pension. ML replied to say a SSAS could work for Mr L's requirements, and could be explored with a financial adviser from the ML group of companies, who could also advise him on the DB transfer.

Firm S Limited emailed its exchanges with ML to Mr L, adding that if he decided to proceed with the DB transfer, a short-term solution could be to transfer into an ML SIPP so he could invest in other P2P platforms, and to then migrate to an ML SSAS at some point in the future when his sister's new company became a reality.

Mr L and Firm S Limited had further communication in March 2018. In this, Mr L said his sister's new company was no nearer to being set up, and they discussed the pros and cons of SIPPs and SSASs offered by Provider G and ML – essentially that ML was more expensive but more flexible. Firm S Limited added that the customer service frustrations Mr L had experienced with Provider G was by itself potentially a good enough reason to move to ML.

A few days later, in March 2018, Mr L signed an ML branded 'Directus' SIPP application form which included the following information:

- Mr L's date of birth, showing that he was 59 years of age, was employed, and had already accessed pension benefits under his existing SIPP.

- The 'Transfers' section set out the details of Mr L's pension to be transferred. This set out that Mr L wanted to transfer assets in specie (i.e. without cashing them in first) into an ML SIPP. Where it asked for in specie assets to be listed, an answer of *"To* [sic] *many to list here"* was recorded, although the following P2P investments were recorded:
  - 'Platform A' with an approximate value of £130,000
  - 'Platform L' with an approximate value of £49,000
  - 'Platform RS' with an approximate value of £37,000

- The ‘Financial Adviser Details’ section asked for details of the financial adviser who was to advise Mr L. This section was left blank and crossed through.

- The ‘Legal Declaration’ section signed by Mr L said, amongst other things, *“I agree that my Financial Adviser and I are solely responsible for all decisions relating to the purchase, retention and sale of the investments within my SIPP Fund and I agree not to hold the Trustee or Administrator liable for any decision made by myself or my Financial Adviser. This does not affect the Administrator’s right to refuse to action or to dispose of any investment which does not fall within the SIPP’s list of permitted investments as amended from time to time.”*

On the same day, Mr L signed a waiver of his thirty-day SIPP cancellation rights. He also signed an ‘Investment in Peer to Peer Lending Account’ document which set out the key investment risks, that the transaction was execution-only, and that he should seek financial advice on investment decisions.

Mr L’s ML SIPP was established in March 2018. Soon after, his holdings in Platform A, Platform L and Platform RS were transferred in specie from his Provider G SIPP into his ML SIPP, along with about £1,442 in cash. I’ve not seen that Mr L transferred the DB mentioned.

From May 2018 onwards, and for the next few years, Mr L made various disinvestments from his Platform A, Platform L and Platform RS holdings. He also made various further investments and disinvestments in Platform A and other P2P platforms.

In September 2018 and March 2019, Mr L transferred cash of £146,244 and £4,954 into his ML SIPP from two defined contribution (‘DC’) occupational pensions. And in April 2019, Mr L began taking TFC and income from his ML SIPP.

In June 2023, Mr L complained to ML that it was responsible for his investment losses. He said none of his ML SIPP investments were tradeable, with several written-off, and this was a much higher level of bad debts and defaults than he’d have expected from investments that ML had considered appropriate to hold within a SIPP, and ML was also currently valuing these too highly. That when he’d been choosing to invest with Platform A, he’d relied on ML accepting it as an appropriate investment. But ML hadn’t met its responsibilities under COBS, hadn’t carried out appropriate investment due diligence, and hadn’t been proactive when things started to go wrong. ML had also been wrong to allow him to invest in so many high risk investments, and his ML SIPP could no longer fund his retirement.

ML responded to Mr L’s complaint in July 2023. It didn’t uphold it, saying:

- ML did not and could not provide financial advice regarding the suitability or otherwise of any SIPP holdings. Mr L’s ML SIPP was on an execution-only basis, and he was responsible for his investment decisions. ML had recommended he seek regulated financial advice, but he’d decided not to.

- ML had met its obligations and carried out thorough due diligence on the investments held within his SIPP. But this didn’t guarantee their success and some would inevitably be less successful than hoped. P2P investing was not risk-free.

- ML wasn’t responsible for a lack of diversity in Mr L’s SIPP. His investments were transferred in specie from Provider G and, apart from some cash, they were all P2P investments already. Further, he’d taken a total of about £255,424 of TFC and taxable income from his ML SIPP, so he’d realised a significant amount from his P2P investments and could’ve chosen to invest these proceeds differently.

- Mr L had already invested with Platform A prior to opening his ML SIPP, and ML had no involvement in this. But he'd invested further in it using his ML SIPP funds. ML had carried out due diligence on Platform A in September 2017 and was reassured that it was a well-established P2P lender, and by its accounts, repayment/default records and its underlying lending criteria. ML had also carried out ongoing due diligence on Platform A and its repayments and returns had remained positive – Mr L himself had received a total of £149,234 from his Platform A holdings. Platform A had chosen to enter a solvent wind down of its loan book as a result of changes to the regulatory landscape – this was not indicative of the quality of its ongoing loans. The loans would naturally run their course, and unlike a forced wind down, there would be no additional administrator's costs.

- It wasn't valuing Mr L's investment too highly. Until it received official notice their values were reduced or zero, it had to value them at the figure given by the investment provider.

- There was still a prospect Mr L would receive a return on his investments, though perhaps less than he'd invested.

Unhappy, Mr L brought this complaint to our Service in August 2023. His submissions to us included, in summary, that:

- ML is authorised and regulated by the FCA and its obligations included acting in his best interests. It had considered these investments were appropriate to accept within a SIPP, and ML's role had been an important factor in his decision-making process.

- ML was wrong to distinguish between investments transferred in specie and those bought using ML SIPP funds. COBS rules and guidance applied in all cases, and ML charged its annual fee based on the value of all his investments – the fee wasn't reduced for investments transferred in specie or in default.

- If he'd known ML's due diligence was insufficient and it wouldn't act when defaults and bad debt went beyond acceptable levels, he'd have invested in a regulated portfolio.

- He accepted that, within a diversified portfolio of P2P investments, there would be some defaults and bad debt. But when these were far in excess of expectations with little valid explanation, he expected ML to step in and take action on his behalf.

- He'd retired in December 2018 intending that his ML SIPP would provide an income. But it was misleading of ML to present the TFC and income he'd taken in a positive light. He'd needed it to cover his daily living expenses. And the total value of assets transferred to his ML SIPP was almost £360,000 - this was done to grow his pension pot, but he now had no income and didn't expect any recovery of his investments.

- ML was wrong to suggest he'd been able to withdraw £149,234 from Platform A because of its due diligence. Many of these withdrawals were 'panic sales' made at a loss on the secondary market because (unlike ML), Mr L had 'seen the writing on the wall' and sold assets while he could to fund his living expenses. By June 2023, all tradeable assets in his ML SIPP had been sold and he'd had zero income from his SIPP since then. So he was in a vulnerable position and his financial worries had caused him health problems.

- If ML estimated the net current value of investments held in his SIPP, he'd be prepared to consider an offer of compensation, on the understanding that all future realisations would accrue to ML and not himself.

- ML's explanation of its due diligence on Platform A just repeated misleading and/or incorrect statements by Platform A, which were at odds with the FCA's version of events. ML's initial due diligence was insufficient and failed to spot weak loan management and credit control processes. ML hadn't evidenced the ongoing due diligence it said it had carried out. And when defaults and bad debts grew, ML didn't tell him it had updated its due diligence.

- Platform A P2P loans hadn't performed as described, loans were advertised on behalf of different borrower companies but many directors were interconnected via previous directorships, many loans followed a similar pattern before failing, and items offered as security have disappeared or are worth much less than their stated value. In July 2022, the FCA instructed Platform A to stop writing new loans and to close down the secondary market. The FCAs intervention was the only reason it was no longer possible to invest with Platform A - not ML's due diligence.

- He was left with the difficult choice of continuing to incur ML's annual administration fee in the hope administrators eventually liquidated some assets, or to close his ML SIPP and write-off its supposed current value of £128,000.

- There was no introducer involved, as he'd contacted ML himself. And he'd not received any incentive payments in relation to the transfer or investments.

- He'd not received any advice regarding the two later DC pension transfers in September 2018 and March 2019; he'd arranged these himself.

- He'd made a Financial Services Compensation Scheme ('FSCS') claim against Provider G in respect of investments made within that SIPP, but the FSCS rejected his claim. Mr L provided a copy of an FSCS letter to support this, which said it hadn't upheld his claim as it didn't think Provider G had failed to carry out adequate due diligence, and Mr L had considered himself an experienced investor.

- £66,707 was the value of new deposits made from his ML SIPP into Platform A. But this was just one of several sources of new deposits made into his Platform A account; other sources included secondary market sales, capital repayments and interest payments. All of these mixed together and became indistinguishable, and could have been invested or withdrawn. So the total value of loans purchased with Platform A was £267,508, not £66,707.

- He'd suffered financial loss on Platform A (£123,002), Platform RS (£35,976) and Platform L (£26,620), plus loss of interest. ML should be held accountable for this and also compensate him for his time and stress in compiling this complaint.

ML's submissions to our Service included that:

- Mr L's complaint amounted to one about the poor performance of his chosen investments, as several haven't performed as well as he'd hoped.

- Mr L expected ML to take action on his behalf once defaults or bad debts arose, but ML wasn't his adviser. It was a SIPP provider and administrator, and wasn't

responsible for making any decisions on Mr L's behalf or deciding how he should proceed with regards to any of his SIPP investments.

- When Mr L's existing holdings were transferred to ML, these were already almost wholly invested in P2P. So Mr L had already decided P2P investments were appropriate for him before ML's involvement. Therefore, his current position wasn't caused by anything ML did or didn't do, and would've happened whether he transferred to ML or elsewhere. So any losses flowing from the investments Mr L had made before ML's involvement are not attributable to ML.

- The documents Mr L signed made clear the transactions were execution-only, that he should seek financial advice but he'd chosen not to, that he understood the risks of not taking advice and the investment in question, and that ML wasn't responsible for the suitability of the transaction. Mr L had chosen not to take advice so he must take responsibility for his own investment decisions – this was confirmed in the High Court judgment in the *Adams* case, which stated that *"...the claimant was to be responsible for his own investment decisions."*

- Mr L essentially complains ML didn't prevent him from making his P2P investments. But ML was limited by its regulatory permissions and its contractual arrangements with clients, which expressly precluded and excluded the giving of advice.

- ML carried out diligence on the P2P provider, not the underlying loans available. But it satisfied itself about the P2P provider's internal procedures regarding the borrowers allowed on its platform. Where a client proceeds with a P2P provider, they login to its platform and are free to choose underlying loans without the SIPP provider's involvement, similar to clients with a stockbroking account. The client is solely responsible for the underlying P2P loans selected. The number of defaulted loans formed part of ML's ongoing review process. But ML's measures didn't guarantee all loans would be successful. ML cannot and does not review each loan.

- ML conducted adequate due diligence before accepting Mr L's chosen P2P investments and fulfilled the principles for investment due diligence set out in R (*Berkeley Burke SIPP Administration Ltd) v Financial Ombudsman Service* [2018] EWHC 2878) ('BBSAL'). These investments weren't inappropriate for a pension scheme and ML had recommended Mr L obtain advice - but he chose not to. Further, Mr L signed the P2P lending notice which warned that the value of his pension may go down as well as up, and may be less than he was expecting on retirement. ML had no reason to refuse the investments, particularly given Mr L had prior knowledge of them through those he'd held with Provider G for years. Mr L had sufficient knowledge and experience to evaluate the merits and risks of the investments.

- Mr L was introduced to ML by Firm S Limited, and ML carried out significant due diligence on it.

- The directors of ML's parent company had previously known and worked with Firm S Limited's director 'Mr B', and Firm S Limited potentially introducing clients to ML was first raised in September 2017 – it became a trading style of Firm B in order to provide regulated introductions to SIPP providers. At the start of the relationship, Mr B confirmed his understanding that ML would only be interested in forming an introducer relationship with him if he were to be regulated/have an appropriate level of regulatory protection. Mr B confirmed that he'd agreed with FCA regulated Firm B that he would be a trading style of Firm B, and so ML's directors were comfortable to

start the introducer relationship. Further, Mr B was FCA approved as a CF1 director of another regulated advisory firm, with no FCA disciplinary action.

- So ML entered an introducer agreement in February 2018. But an administrative error meant it referred to Firm S Limited rather than Firm S as a trading style of Firm B. However, all parties understood Firm S as a trading style of Firm B was the source of introductions, not Firm S Limited, and the agreement was corrected in around September 2020. ML carried out ongoing checks on the introducer.

- Firm S Limited's members were high net worth ('HNW') and/or sophisticated investors who signed relevant statements; members had to be financially sophisticated to access the Firm S Limited forum. This was a safeguard for the type of clients Firm S Limited introduced to ML. Many of these clients wanted to transact on an execution-only (i.e. non-advised) basis and it was made clear to them that neither ML nor Firm S Limited offered financial advice on the transactions. Through this process, there were no red flags. ML was entitled to accept the introduction of Mr L's SIPP business.

- In accordance with the introducer agreement, ML paid Mr B of Firm S Limited a payment equivalent to 25% of ML's fee.

- ML suggested it can't fairly or reasonably have been aware that business from this introducer involved a high risk of consumer detriment, because of the volumes of business or otherwise. It said it accepted 71 introductions from this introducer, of which Mr L was the fifth, compared to the total of 847 introductions it received during the same period. Only 8 of the 71 involved transfers from DB schemes. Of the 71, 62% went into non-mainstream investments. And of the 62%, 64% invested in a mixture of mainstream and non-mainstream investments with the rest invested wholly in non-mainstream investments.

- ML completed due diligence on Mr L's investments, including Platform A, and provided us with some documentary evidence of this. It concluded they were allowable for a SIPP. The P2P platforms were registered with the FCA and showed evidence of being robust companies with well-developed platform software. But ML hadn't formally carried out due diligence on Platform RS, as no new investments with it were allowed at that time.

In separate complaints brought to our Service against ML featuring Firm S Limited, ML's submissions have included the following:

- The judgment in Adams v Options SIPP UK LLP (formerly Carey Pensions UK LLP) [2020] EWHC 1229 (Ch) (18 May 2020) (Adams v Carey) held that the scope of a SIPP provider's duty was determined by the contractual terms agreed with the member and that the duty owed in COBS 2.1.1R (*A firm must act honestly, fairly and professionally in accordance with the best interests of its client)* must be interpreted in the context of the contractual agreement between ML and the client.

- ML undertook full and proper due diligence on the introducer. The introducer's primary purpose was a forum for knowledgeable investors to obtain information and share resources regarding SIPP products, which included the introduction of certain investment opportunities. The introducer ensured investors satisfied the relevant criteria (i.e. sophisticated or HNW investor) before providing them with any investment documentation - to access the forum, individuals were required to self-certify that they were sophisticated and/or HNW investors. And it clarified the

investment risks and stressed that investors should seek financial advice if they didn't understand anything. The forum was aimed at sophisticated and/or HNW investors with sufficient understanding of the risks of unregulated investments - it wasn't aimed more broadly and didn't offer advice. Its website and terms made clear it was intended to be a starting point for further research and the information provided wasn't tailored to an individual's personal circumstances - it said members must bear full responsibility for their own financial research and decisions, including taking pension advice where appropriate.

- Firm S Limited agreed it would only refer business from HNW and/or sophisticated investors to ML, so those it introduced to ML were sufficiently knowledgeable and/or experienced to understand the risks associated with non-mainstream pooled investments and could obtain independent advice before making any investment decisions. This provided a safeguard for the type of client it referred to ML, and ML obtained the relevant declarations from each individual.

- Both the introducer and ML ensured HNW individuals met the criteria set out in COBS 4.12.6R. ML also took reasonable steps to ascertain the client met the income and net assets criteria set out in the statement in accordance with COBS 4.12.9G.

- ML had systems in place to recognise and act on warnings by refusing to accept SIPP applications, as it had done on previous occasions – ML didn't clarify whether these were applications from the introducer in question here.

- ML accepted its obligations went further than just checking the investment was 'SIPPable'. It conducted appropriate due diligence.

- If ML had done more, it would have exceeded its scope of duty as an execution-only agent, gone beyond its SIPP terms and conditions, and would have strayed into providing advice - which ML expressly wasn't contracted or required to do.

- Our Service must take account of relevant law and regulations as required by DISP 3.6.4R and explain when we depart from them. The client's complaint failed to explain ML's alleged duty to have refused their SIPP application and investment instruction. No such duty was recognised in *Adams*. And key principles arose from *Adams* which our Service must take into account pursuant to DISP 3.6.4R.

- *Adams* didn't consider the Principles because a breach of such is not directly actionable in law – rather, they are overarching principles applicable to the whole regulatory regime, not just SIPP providers. The client's complaint hadn't taken account of *Adams* simply because the Principles weren't pleaded. It was wrong to apply the Principles as actionable rules in the absence of any specific actionable rule, in order to circumvent the limited, execution-only function ML was permitted to exercise as agreed with the client. *Adams* specifically addressed the issue of due diligence under COBS 2.1.1R.

- It wasn't for ML to distinguish between customers who had been advised and those that hadn't been; its scope of duty was set out in the contractual terms with the client which clearly stated ML wasn't providing advice. To have refused the client's business because they hadn't obtained advice would have constituted advice by reason of determining that the SIPP and/or investment weren't suitable for them. Further, the client was switching one personal pension for another with ML, so it's unclear on what basis ML should have refused their application.

- The facts of the client's case were very different to the BBSAL case, given that the scheme quoted in BBSAL had been found to be a fraudulent scam to which Berkeley Burke failed to obtain title to any underlying asset. Neither of these facts applied in the client's case.

- No specific consumer detriment has been identified by Firm S Limited's involvement; the FCA permits unregulated introducers subject to appropriate due diligence and monitoring, which ML had carried out in any event.

- The various risk warnings and declarations signed by the client formed part of their contractual agreement with ML so it's wrong in law to dismiss these. Further, it's not fair or reasonable to conclude these were included to absolve ML of responsibility - the documents reflect the client's understanding of the risk they were taking.

- Our Service sought to impose duties on ML which go far beyond those prescribed by any legal or regulatory authority.

- The FCA hasn't issued any guidance to suggest that customers wishing to make transfers from a DC pension to a SIPP must have obtained regulated advice, or that advice be taken for investments made within a SIPP.

- Our Service focused on Firm S Limited's unregulated status. But this posed no risk of consumer detriment, given it required clients to meet a certain level of market sophistication in order to access its forum and in turn for ML to allow the investments. This safeguarded the type of client referred to ML.

- An investment may be high risk but whether it is suitable depended on the client's risk profile. ML didn't know about the client's other investments and didn't have to consider the suitability of the investment for them; ML couldn't provide advice.

- Our Service said ML should base its redress calculations for the client on the FTSE UK Private Investors Income Total Return Index, but this isn't a fair and reasonable benchmark. Our Service was wrong to assume the client would've invested in the FTSE UK Private Investors Income Total Return Index or an equivalent fund, and wouldn't have invested in a higher risk investment. This index is contrary to our Service's stance on a realistic return in upheld DB transfer complaints to which discount rates of about 4% are routinely applied (here, ML pointed to a separate decision by our Service which it thought supported this point).

- ML shouldn't compensate the client for distress and inconvenience, as it didn't cause them any. Any financial loss was due to the client's own investment decisions, and investment performance.

One of our Investigators considered Mr L's complaint but thought it shouldn't be upheld. He said it wasn't ML's responsibility to ensure the investments were suitable for Mr L's circumstances or to advise him on their performance. And while it was disputed whether or not Mr L had been introduced to ML, this wasn't of concern because the introducer was an authorised firm at that time and Mr L said he'd not received any advice. Our Investigator said that even if ML had refused to accept his SIPP application and in specie transfers, it wouldn't have changed his situation. Because these investments were already in place and many of the loans had already defaulted and were subject to recovery action, so Mr L couldn't have cashed in his portfolio with Provider G. Our Investigator thought ML didn't have any reason to reject the two further DC pension transfers Mr L later made. And that even if ML had done more due diligence on the further investments Mr L made with Platform A, it wouldn't have

found anything that meant it ought to have concluded such further investment wasn't appropriate.

Mr L disagreed with the Investigator. He reiterated some points he'd made previously and added others. Below, I've summarised his new points that I see to be relevant:

- The Investigator had omitted several important matters, didn't fully consider ML's obligations under PRIN and COBS or reach a logical conclusion, and included factually incorrect and unsubstantiated opinion. And the conclusions drawn were inconsistent with those reached by our Service and the FSCS in separate complaints that involved what Mr L saw to be similar circumstances.

- The total value of cash transferred into his ML SIPP was £629,9142. And £386,019 worth of new Platform A loans were entered into via his ML SIPP, on top of the £137,457 worth of Platform A loans transferred in specie.

- ML could have carried out due diligence prior to accepting the in specie transfers, and insisted that he cash in existing assets prior to transfer.

- He was surprised to learn ML paid an introducer's commissions to Firm S Limited. And was confused that the Investigator said he'd been dealing with an authorised firm. Because his correspondence was with Firm S Limited, not Firm B.

- He'd chosen to move from Provider G to ML for a number of reasons – mainly because he was unhappy with Provider G's customer service and he'd already decided not to invest further with it, and was talking to Firm S Limited about alternative investment opportunities. He'd chosen ML in expectation of better customer service and greater investment flexibility. But after transfer, ML's charges were higher than expected, so possible alternative investments weren't viable.

- Our Investigator was wrong to say many of the assets transferred in specie were already in default. If so, ML would've imposed special terms or rejected the transfer.

- Our Investigator was wrong to say he wouldn't or couldn't have liquidated his Provider G portfolio prior to transferring to ML. At that point, more than two thirds of it was held in Platform A loans plus cash, and the Platform A secondary market was buoyant – between March 2018 and June 2022, he made secondary market sales of about £252,000.

- ML saying it hadn't carried out due diligence on the underlying loans was an admission of fault. And by not informing him of its due diligence's limitations, ML had failed to treat him fairly. If it had informed him, he'd have been more inclined to include standard investments within his ML SIPP portfolio.

- In Mr L's view, there was evidence suggesting the Platform A P2P loans were scams and linked to fraudulent activity. And that there were red flags ML should have seen and steps it should have taken to protect and represent its client's best interest.

- He shouldn't have to pay future ML SIPP charges if his ML SIPP needed to stay open until all assets were recovered or written off as bad debt.

As agreement couldn't be reached, this complaint was passed to me for a decision.

At my request, Mr L provided some further information, including copies of his emails with Firm S Limited in early 2015 and early 2018. Mr L said the 2015 emails showed Platform A was first mentioned then; he was drawn to it because it had been vetted and approved for inclusion in a SIPP. And Mr L said the 2018 emails showed he was interested in investing in his sister's new company, which hadn't been possible with Provider G. But it wasn't made clear to him that ML's fees were prohibitive, otherwise he wouldn't have transferred his SIPP to it - instead, he'd have run down his Provider G SIPP by withdrawing all liquid assets, not making any further P2P investments and not transferring in his two other DC pensions. And he would've used the resulting funds to invest in his sister's new company, outside his SIPP – this company was thriving and would've been a good investment.

Also at my request, ML provided some further information. This included that Mr L hadn't signed a HNW statement. And it included a transaction list for his ML SIPP, and copies of documentation to support that Platform L went into administration in May 2019, Platform A went into administration in January 2024, and his Platform RS loan was in default (though Platform RS itself was still active).

I issued a provisional decision in which I explained why I thought Mr L's complaint should not be upheld.

ML accepted the provisional decision and did not make any further submissions.

Mr L disagreed with the provisional decision and provided further comments. Although I have carefully considered these in their entirety, here I'll summarise what I see to be the new comments Mr L made:

- Our Service's stated intention is to put consumers back into the position they should have been in if the business had not made an error. But the provisional decision did not achieve this outcome. He would have been in a better financial position if ML had declined his SIPP business.

- The provisional decision said he would most likely have found an alternative SIPP provider to accept a direct SIPP application and investment instructions and so it's most likely that he would still be in the same position. But these statements of opinion weren't supported by factual evidence and fell well short of the threshold required to state with any degree of certainty that this is the position he'd have been in. And it wasn't fair and reasonable that a decision that has such an important bearing on his financial wellbeing should be based on a personal opinion for which there was no supporting evidence.

- He is the only person with a full appreciation of his situation and so is in the best position to evaluate how he would have proceeded if ML had refused his SIPP business.

- The documentary evidence shows that his primary objective in March 2018 was to invest in commercial property (his sister's potential venture), supported by a lesser amount in P2P. The only reason this commercial property investment wasn't realised was because of ML's high fees and restrictive terms. And he proceeded to invest heavily in P2P was because of ML's repeated claims that it carried out due diligence checks on P2P investments and that he would be notified of ongoing changing to risk profile; he wouldn't have agreed to pay ML's fees otherwise.

- At that time, his prior experience of P2P had made him realise he didn't have the necessary time, energy, skills or expertise to carry out the required amount of due

diligence, and ML was the only SIPP provider he was aware of that could meet his requirements.

- He was actively considering a business opportunity to invest in his sister's commercial property venture. If this opportunity had been realised as planned, this would have been the majority of his investments with a lesser amount of P2P. His sister's venture went ahead and it was only his participation in it that didn't ultimately happen - the venture is thriving and has expanded significantly. And the reason he didn't participate was because of ML's high charges and restrictive terms, which ML hadn't made clear to him at the beginning.

- It was wrong to say he wanted to invest heavily in P2P; he only did so because ML claimed to carry out in-depth due diligence. It was wrong to assume he was an insistent P2P investor and that a similar pattern of events would have happened if ML had declined his SIPP business. He was a cautious investor who relied on ML's expertise and due diligence; he'd understood that was what he was paying for. The possibility of the same result being repeated with a different SIPP provider is so remote as to be negligible. And if his existing SIPP had been transferred to an alternative SIPP other than ML, his participation in P2P loans would have been relatively short-term; he would have bought and sold P2P loans to suit his more important commercial property investment and his exposure to P2P risks would've been correspondingly reduced.

- He is a cautious investor who doesn't make investment decisions lightly. For example, he spent many months corresponding with the various parties before deciding to transfer to ML.

- It may be that an alternative SIPP provider existed, but the assumption that he would have contracted with them is tenuous at best and can't be substantiated. Because he wasn't aware of alternative SIPP providers and could only have become aware of such through Firm S Limited – and it hadn't mentioned any over the years. At that time, he had many demands on his time and energy, so he had to prioritise his time, and he would not have had time to spend several months assessing alternative SIPP providers. So the likelihood of him engaging an alternative SIPP provider within the seven-month window before Provider G entered administration was so remote as to be implausible.

- Even if certain elements envisaged in the provisional decision came to pass, it's highly likely his financial outcome would've been much better than that experienced with ML.

- Mr L set out in detail what he considered to be four possible scenarios if ML had refused his SIPP application. He thought two of these scenarios were most likely. Firstly, that he would've stayed in his Provider G SIPP, and that once Provider G ceased trading, any plans he had would have been put on hold pending its administration, so he couldn't have transferred out of it and his other pension transfers wouldn't have gone ahead either. The experience of having his ML SIPP application declined followed by Provider G entering administration would have persuaded him it was best to liquidate his assets and pursue investments outside of a SIPP. And any illiquid assets in his SIPP would have become the subject of an FSCS claim.

- Or secondly, that he would have liquidated the assets in his Provider G SIPP in order to close the SIPP as soon as possible, and he would have withdrawn his funds from

it and invested in his sister's venture outside of his SIPP. So his other pension transfers wouldn't have gone ahead either, and any illiquid assets in his SIPP would have become the subject of an FSCS claim.

- The scenario set out in the provisional decision is the only one in which the financial outcome may have been as bad as that experienced with ML. And the possibility of 'history repeating itself' in that way was extremely remote and not likely.

- If ML had declined his SIPP application, none of his money would have been paid to ML. But the provisional decision didn't put right all the charges he'd paid to ML over the years. This wasn't fair, if ML should have declined his SIPP application.

As both parties have been provided with the opportunity to respond to the provisional decision, I'm now in a position to make a final decision. I'd like to thank both parties for their patience.

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.

Both parties have provided detailed submissions to support their respective positions, and I'd like to assure them that I've carefully reconsidered everything provided, including in response to the provisional decision. But while I mean no discourtesy, I won't address every point or piece of evidence provided. Instead, my decision will focus on what I consider to be the key issues in reaching a fair and reasonable outcome to this complaint. That said, I would like to acknowledge what Mr L has told us about his financial and health difficulties; I'm very sorry to hear of these and I don't doubt they've had a significant impact on him.

Also, I'd like to make clear that where the evidence is incomplete, inconclusive, or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

Relevant considerations

Mr L suggests our Service should uphold this particular complaint, in order to be consistent with the conclusions drawn by our Service and the FSCS in separate complaints that involved what Mr L sees to be similar circumstances. I am mindful of the importance of consistency in these matters. But I am nonetheless required to determine this complaint by reference to what I consider to be fair and reasonable in all the circumstances of this particular case.

And when considering what is fair and reasonable in the particular circumstances, I need to take account of relevant law and regulations, regulator's rules, guidance and standards, codes of practice and, where appropriate, what I consider to have been good industry practice at the relevant time.

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

- The agreement between the parties.
- The Financial Services and Markets Act 2000 ("FSMA").
- Court decisions relating to SIPP operators, in particular Options UK Personal Pensions LLP v Financial Ombudsman Service Limited [2024] EWCA Civ 541 (*"Options"*) and the case law referred to in it including:

    - Adams v Options UK Personal Pensions LLP [2021] EWCA Civ 474 ("*Adams"*)
    - R (Berkeley Burke SIPP Administration) v Financial Ombudsman Service [2018] EWHC 2878 (*"Berkeley Burke"*)
    - Adams v Options SIPP UK LLP [2020] EWHC 1229 (Ch) (*"Adams – High Court"*)
- The FSA and FCA rules including the following:
    - PRIN Principles for Businesses
    - COBS Conduct of Business Sourcebook
    - DISP Dispute Resolution Complaints
- Various regulatory publications relating to SIPP operators, and good industry practice.

The legal background:

As highlighted in the High Court decision in *Adams* the factual context is the starting point for considering the obligations the parties were under. And in this case it is not disputed that the contractual relationship between ML and Mr L is a non-advisory, or execution only, relationship.

Setting up and operating a SIPP is an activity that is regulated under FSMA. And pensions are subject to HMRC rules. ML was therefore subject to various obligations when offering and providing the service it agreed to provide – which in this case was a non-advisory service.

I have considered the obligations on ML within the context of the non-advisory relationship agreed between the parties.

The case law:

I'm required to determine this complaint by reference to what is in my opinion fair and reasonable in all the circumstances. I am not required to determine the complaint in the same way as a court. A court considers a claim as defined in the formal pleadings and they will be based on legal causes of action. The Financial Ombudsman Service was set up with a wider scope which means complaints might be upheld, and compensation awarded, in circumstances where a court would not do the same.

The approach taken by the Financial Ombudsman Service in two similar (but not identical) complaints was challenged in judicial review proceedings in the *Berkeley Burke* and the *Options* cases. In both cases the approach taken by the Ombudsman concerned was endorsed by the court. A number of different arguments have therefore been considered by the courts and may now reasonably be regarded as resolved.

It is not necessary for me to quote extensively from the various court decisions.

The Principles for Businesses:

The Principles for Businesses, which are set out in the FCA's Handbook "*are a general statement of the fundamental obligations of firms under the regulatory system"* (see PRIN 1.1.2G). The Principles apply even when the regulated firm provides its services on a non-advisory basis, in a way appropriate to that relationship.

Principles 2, 3 and 6 are of particular relevance here. They provide:

"*Principle 2 – Skill, care and diligence – A firm must conduct its business with due skill, care and diligence.*

Principle 3 – Management and control – A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.

Principle 6 – Customers' interests – A firm must pay due regard to the interests of its customers and treat them fairly."

I am satisfied that I am required to take the Principles into account (see *Berkley Burke*) even though a breach of the Principles does not give rise to a claim for damages at law (see *Options*).

The regulatory publications and good industry practice:

The regulator issued a number of publications which reminded SIPP operators of their obligations, and which set out how they might achieve the outcomes envisaged by the Principles, namely:

- The 2009 and 2012 Thematic Review Reports.
- The October 2013 finalised SIPP operator guidance.
- The July 2014 *"Dear CEO"* letter.

The 2009 Report included:

"We are concerned by a relatively widespread misunderstanding among SIPP operators that they bear little or no responsibility for the quality of the SIPP business that they administer, because advice is the responsibility of other parties, for example Independent Financial Advisers…

We are very clear that SIPP operators, regardless of whether they provide advice, are bound by Principle 6 of the Principles for Businesses ('a firm must pay due regard to the interests of its clients and treat them fairly') insofar as they are obliged to ensure the fair treatment of their customers."

The Report also included:

"The following are examples of measures that SIPP operators could consider, taken from examples of good practice that we observed and suggestions we have made to firms:

- *Confirming, both initially and on an ongoing basis, that intermediaries that advise clients are authorised and regulated by the FSA, that they have the appropriate permissions to give the advice they are providing to the firm's clients, and that they do not appear on the FSA website listing warning notices.*

- *Having Terms of Business agreements governing relationships, and clarifying respective responsibilities, with intermediaries introducing SIPP business.*

- *Routinely recording and reviewing the type (i.e. the nature of the SIPP investment) and size of investments recommended by intermediaries*

that give advice and introduce clients to the firm, so that potentially unsuitable SIPPs can be identified.

- *Being able to identify anomalous investments, e.g. unusually small or large transactions or more 'esoteric' investments such as unquoted shares, together with the intermediary that introduced the business. This would enable the firm to seek appropriate clarification, e.g. from the client or their adviser, if it is concerned about the suitability of what was recommended.*

- *Requesting copies of the suitability reports provided to clients by the intermediary giving advice. While SIPP operators are not responsible for advice, having this information would enhance the firm's understanding of its clients, making the facilitation of unsuitable SIPPs less likely.*

- *Routinely identifying instances of execution-only clients who have signed disclaimers taking responsibility for their investment decisions, and gathering and analysing data regarding the aggregate volume of such business.*

- *Identifying instances of clients waiving their cancellation rights, and the reasons for this."*

I have considered all of the above publications in their entirety. It is not necessary for me to quote more fully from the publications here.

The 2009 and 2012 Thematic Review Reports and the *"Dear CEO"* letter are not formal guidance (whereas the 2013 finalised guidance is). However all of the publications provide a reminder that the Principles for Businesses apply and are an indication of the kinds of things a SIPP operator might do to ensure it is treating its customers fairly and produce the outcomes envisaged by the Principles. In that respect, the publications which set out the regulators' expectations of what SIPP operators should be doing also go some way to indicate what I consider amounts to good industry practice, and I'm therefore satisfied it's appropriate to take them into account (as did the Ombudsman whose decision was upheld by the court in the *Berkeley Burke* case).

Points to note about the SIPP publications include:

- The Principles on which the comments made in the publications are based have existed throughout the period covered by this complaint.
- The comments made in the publications apply to SIPP operators that provide a non-advisory service.
- Neither court in the *Adams* case considered the publications in the context of deciding what was fair and reasonable in all the circumstances. As already mentioned, the court has a different approach and was deciding different issues.
- What should be done by the SIPP operator to meet the regulatory obligations on it will always depend upon the circumstances.

The contract between ML and Mr L

ML has made submissions about its contract with clients and I've carefully considered everything ML has said about this.

For clarity, my decision is made on the understanding that ML acted purely as a SIPP operator. I don't say ML should (or could) have given advice to Mr L or otherwise have ensured the suitability of the SIPP or the intended investments for him. I accept that ML made it clear to Mr L that it wasn't giving, nor was it able to give, advice and that it played an execution-only role in his SIPP investments. And that forms it appears Mr L signed confirmed, amongst other things, that losses arising as a result of ML acting on his instructions were his responsibility.

I've not overlooked or discounted the basis on which ML was appointed. And my decision on what's fair and reasonable in the circumstances of Mr L's case is made with all of this in mind. So, I've proceeded on the understanding that ML wasn't obliged – and wasn't able – to give advice to Mr L on the suitability of the SIPP or the intended investments.

What did ML's obligations mean in practice?

In this case, the business ML was conducting was its operation of SIPPs. And I'm satisfied that, to meet its regulatory obligations, when conducting its operation of SIPPs business, ML had to decide whether to accept or reject particular introductions of business and/or investments with the Principles in mind. To be clear, I don't agree that it couldn't have rejected applications without contravening its regulatory permissions by giving advice.

The regulator's reports and guidance provided some examples of good practice observed by the FCA during its work with SIPP operators. This included being satisfied that an introducer is appropriate to deal with and that a particular investment is appropriate to accept. That involves conducting due diligence checks to make informed decisions about accepting business. This obligation was a continuing one.

I am satisfied that, to meet its regulatory obligations, when conducting its business, ML was required to consider whether to accept or reject particular business, with the Principles in mind.

All in all I am satisfied that, in order to meet the appropriate standards of good industry practice and the obligations set by the regulator's rules and regulations, ML should have carried out due diligence which was consistent with good industry practice and its regulatory obligations at the time. And in my opinion, ML should have used the knowledge it gained from this to decide whether to accept or reject introductions of business or a particular investment.

What due diligence ML carried out on the introducer – and what ML should have done

I know Mr L says there wasn't an introducer and that he contacted ML directly. But for clarity, I'm satisfied that Firm S Limited introduced Mr L's SIPP business to ML. I say that because the early 2018 emails between Mr L and Mr B of Firm S Limited show Mr B suggested ML as a potential SIPP provider for Mr L and contacted ML about this. And also because ML recorded Firm S Limited as the introducer here.

As I say, ML had a duty to conduct due diligence and give thought to whether to accept introductions of SIPP business.

From the information ML has provided about its relationship with the introducer in question here, I'm satisfied ML did take some steps towards meeting its regulatory obligations and good industry practice. However, I don't think ML drew reasonable conclusions from what it knew or ought to have known. I think that it ought to have concluded there was a significant

risk of consumer detriment associated with SIPP business from this introducer, before it accepted Mr L's application. I'll explain why.

I appreciate that ML says it didn't need to distinguish between customers who'd been advised and those who hadn't, and that the FCA permits unregulated introducers subject to appropriate due diligence and monitoring, which ML had carried out in any event.

But I think the introducer in question's arrangement was an unusual one, in that Firm S *Limited* was not regulated, but the almost identically named Firm S was a trading style of regulated Firm B. And Firm S Limited and Firm S were linked. ML says so in its testimony. And the copies of several of Firm S Limited's historic website pages which ML has obtained from an internet archive and provided to our Service in a separate but similar complaint shows this too. The main text of the webpages simply refer to Firm S, but the footer of each says the website is copyrighted to Firm S *Limited*, with one of the webpages from 2019 also adding that *"Where an introduction is made for financial advice,* [Firm S] *is a trading name of* [Firm B]*, which is authorised and regulated by the Financial Conduct Authority (Firm Reference* [number])*."*

ML has told us that all parties (therefore including itself) understood the introductions of SIPP business to be coming from Firm S as a trading style of regulated Firm B - that Firm S became a trading style of Firm B in order to provide regulated introductions to SIPP providers, and that given the confirmed regulatory status and that ML's directors had previously worked with Firm S Limited's director Mr B (who himself was an FCA approved individual), ML thought an introducer relationship was acceptable as long as an agreement was put in place to show the terms agreed at the outset. So ML appears to have relied on regulatory status when deciding whether to accept business from this introducer.

However, I've seen that the introducer agreement ML signed in February 2018 was at odds with what ML says of its understanding, as set out above. ML has provided us with a copy of that agreement in a separate but similar complaint brought to our Service. I note ML says there was an administrative error and the agreement was intended to be with Firm S as a trading style of Firm B, and was later amended in September 2020. But nonetheless, I can see the introducer agreement signed in February 2018 was between ML and Firm S Limited (an unregulated business) and was signed by Mr B (the director of Firm S Limited) – Mr B was not a director of Firm B. Whereas the amended agreement of September 2020 was between Firm S as a trading style of Firm B and was signed by a director of Firm B.

Further, ML says Mr L was introduced by what ML describes as a forum for members specifically looking to manage their own pensions and to share information about SIPPs and investments, aimed at sophisticated and/or HNW investors with sufficient understanding of the risks of unregulated investments, but not aimed more broadly and not offering advice. I think this describes Firm S Limited, based on what I've seen of Firm S Limited's website, which I'll come back to. So I think it's fair and reasonable to say that the introductions, at least until September 2020, were in fact coming from Firm S Limited and not Firm S as a trading style of Firm B. And even if I'm wrong about this, I don't think it changes the outcome here. Because if ML understood the introductions to be coming from Firm S as a trading style of Firm B and was comforted by any associated regulatory status, as it's argued, then I think ML still ought to have been concerned that no regulated advice was being provided, given what I'll come on to say about the misleading information publicly available on Firm S Limited's website.

So given what ML knew, or ought to have known, I think it ought to have been concerned from the start that this was an unusual arrangement in which there was confusion about where the introductions of SIPP business were actually coming from. I think it ought to also have been concerned from the start that those introductions were in fact coming from

unregulated business Firm S Limited, and that such introductions may lead to consumer detriment. I'll explain why.

Unregulated introducers are not necessarily and automatically to be avoided or vetoed, but there is a need to be cautious. An unregulated introducer might cross the line into giving advice they are not authorised to give. They will promote the benefit of anything they introduce and may not do so in an impartial way. Their involvement in a process, and particularly their financial interests in a particular outcome being achieved, can create distorting pressures on a consumer's decision making.

I appreciate that Firm S Limited was an online forum that consumers could find for themselves. But having carefully considered the available evidence I've seen in this complaint and in other complaints against ML featuring this introducer, I think it's more likely than not that most, if not all, of the consumers introduced to ML by this introducer were doing the same thing. By which I mean that forms were being submitted to ML for Firm S Limited clients recording that no advice had been given, that pension monies were then being transferred into the newly established ML SIPPs for those consumers, and, subsequently, the consumers' SIPP monies were being invested in esoteric and/or non-standard and high risk investments.

To be clear, I don't think it's credible that most, or all, of these Firm S Limited-introduced clients were independently determining to transfer their pension monies and invest them in such investments. I've considered the copies of the archived webpages for Firm S Limited that ML has provided to us. I acknowledge that these are not a complete archive of Firm S Limited's website. I also acknowledge that, in places, these webpages include statements and disclaimers to the effect that Firm S Limited didn't advise or recommend specific investments or strategies, and its role was to provide information so that sophisticated and HNW clients could make their own informed financial decisions. And I note that Firm S Limited's 'Terms of Use' webpage from 2022 includes, amongst very many other points, warnings that clients might lose money or not get back what they put in, that it doesn't vet or investigate the solvency of the companies it mentions on its website, and that it doesn't control the accuracy or completeness of the information its website links to.

However, I think these warnings were undermined by the Firm S Limited webpages I've seen, that prominently and repeatedly made misleadingly positive and encouraging statements about both transferring to a SIPP (which is a fairly specialised pension arrangement in any case) and about the investment products on Firm S Limited's 'panel'. I've set out some of these statements below – the parts in bold have been highlighted by me.

The 2016 webpage titled 'How to Grow Your SIPP or SSAS Like An Expert' includes the following:

- *"**If you want to make more money** in your SIPP or SSAS, **you're in the right place**"* and *"If you don't have a SIPP or a SSAS and you'd like one, you're also in the right place."*

- *"While the stockmarket offers many benefits, there are four massive areas outside of it that provide **some really high earning opportunities, often at lower risk**:*
  - *INVEST: **Earn 10 per cent or more** by putting your pension money into ready-made 'hands off' packaged investments, **backed by the security of property**.*
  - *LEND: 'Be the bank' and lend your pension fund to individuals and businesses, **earning tax free interest of 10 per cent or more for your pension**."*

- *"Providing they meet **our exacting standards**, we maintain **an exclusive panel of the UK's leading specialist and investment product providers** in every one of the above areas, and more areas besides.*

  Our service is free because we're paid by some of the specialists and product providers we include on our panel.
  …

  [Firm S Limited's] *mission is to help improve your knowledge, **maximise the value of your investments** and ultimately have you regard* [Firm S Limited] *as a trusted financial friend."*

- Testimonials from clients, all of which I've seen were positive.

- A description of Firm S Limited's founder and director Mr B, which said he is *"…**an expert in financial services** and* [Firm S Limited's] *blogger. After building several successful financial services business over 35 years, he's refocused on what he loves most; **helping people become financially free in retirement through proper pension planning. You'll find his approach to making money is effective.** He's developed it over many years, and it's enabled him to help many people enjoy financial independence in their retirement. More specifically, he uses the **perfect blend of data driven information** (investment analysis, academic research and case studies) and knowledge from a wide range of experts **to help more people make the best use of their money**."*

The 2019 webpage titled 'All You Need to Know About SIPP and SSAS' says *"Our services are available without charge. That's because we're usually paid by firms featured on* [Firm S Limited]*, or from firms to whom we introduce you, should you do business with them"* and includes links to other Firm S Limited webpages titled:

- *"Select property backed investments earning around 10 per cent per year"*

- *"Discover the most appropriate SIPP to fulfil all your investments needs"*

- *"Join others who are profiting from crowdfunding and peer-to-peer lending."*

So based on the evidence I've seen, I think it's fair and reasonable to conclude that Firm S Limited's website (which ML could view) overall gave a misleadingly unbalanced and unrealistically positive view of transferring to a SIPP and investing in the products it featured. In addition, the website made clear that Firm S Limited was paid by the firms behind the investments. And the February 2018 introducer agreement makes clear that for each introduction ML would pay Firm S Limited an 'Introductory Fee' equivalent to 25% of ML's fee.

So I think ML ought to have been concerned that Firm S Limited might have misled the consumers it was introducing, and 'sold' them the idea of transferring pension monies so as to invest in non-standard and/or high risk investments, and ML ought to have been further concerned that Firm S Limited would benefit financially from such transactions.

Further, ML has provided some information about the type of business Firm S Limited introduced to it. ML says 71 clients were introduced, only a small number compared to the total of 847 introductions ML received in the same period. And that only 8 of the 71 involved transfers from DB schemes.

ML also says it carried out ongoing checks and monitored introductions to ensure they did not solely involve unregulated investments. ML has provided further information about the type of transfers and investments made by the first 16 clients introduced to it by Firm S Limited. Of these, 13 invested partly or wholly in non-mainstream investments (including 7 in a particular unregulated and esoteric investment), with an average of 61% of SIPP funds invested in non-mainstream investments.

So almost from the very start, the SIPP business introduced by Firm S Limited involved significant amounts of SIPP monies ending up invested in non-standard and/or high risk, and often unregulated, investments post-transfer. Therefore, ML ought to have understood that these investments were unlikely to be suitable for most retail investors, and that even for sophisticated or HNW investors (which ML says these were), and unregulated and esoteric investments were unlikely to be suitable for more than a small proportion of their pension. And for clarity, it doesn't appear that ML sought to confirm whether Mr L was a HNW or sophistication investor.

I do not say ML was under any obligation to assess the suitability of these investments for individual members. But it should have been aware that there was a considerable risk of consumer detriment if these investments were sold to investors for which they were not suitable.

So these were the potential risks of the business Firm S Limited was introducing to ML, and the potential risks of consumer detriment that I think ML either knew about, or ought to have known about, before it accepted Mr L's SIPP application. These points overlap, to a degree, and should have been considered by ML cumulatively. Each of these in isolation is significant, but cumulatively I think they demonstrate that there was a significant risk of consumer detriment associated with the introductions ML received from Firm S Limited.

ML didn't act with due skill, care and diligence, organise and control its affairs responsibly, or treat Mr L fairly by accepting his introduction of business from Firm S Limited. To my mind, ML didn't meet its regulatory obligations or good industry practice at the relevant time, and allowed Mr L to be put at significant risk of detriment as a result. ML should have concluded, and before it accepted Mr L's business from Firm S Limited, that there was a significant risk of consumer detriment if it accepted introductions from Firm S Limited. I therefore conclude that it's fair and reasonable in the circumstances to say that ML shouldn't have accepted Mr L's SIPP application at all. This was clearly a step ML was aware it could take, since it's told us it had systems in place to recognise and act on warnings by refusing to accept SIPP applications, as it had done on previous occasions.

This all means that I think that ML ought to have refused to accept Mr L's SIPP application in March 2018.

Mr L says that our Service's stated intention is to put consumers back into the position they should have been in if the business had not made an error. And I accept ML made an error, as I've explained. However, that doesn't automatically mean that it is fair and reasonable to uphold this complaint and hold ML liable for Mr L's loss to his SIPP. I have to consider what would have happened if ML had refused Mr L's SIPP application in March 2018.

I've thought carefully about what Mr L would likely have done if ML had told him it was rejecting his SIPP business in March 2018. I think ML could reasonably have given Mr L an explanation as to why it wouldn't accept his introduction of SIPP business from Firm S Limited, even in broad or general terms.

It may be that Mr L would then have reapplied for an ML SIPP as a direct client, rather than as a client introduced by Firm S Limited. But given what I've said about the conclusions ML

ought to have reached in relation to Firm S Limited, I think it's more likely than not that ML would have rejected a second SIPP application from Mr L even as a direct client, on the basis that his SIPP business was still tainted by Firm S Limited's prior involvement.

Mr L has made detailed submissions in which he sets out the various probabilities of what he sees to be the possible scenarios for what would have happened. And I've considered these carefully.

But on balance, having considered the evidence in this complaint, I remain of the view that Mr L would have sought out another SIPP operator which was prepared to accept his existing and planned investments. Mr L argues he didn't know of any alternative SIPP operators and could only have found them through Firm S Limited. But I'm satisfied that such SIPP operators existed at the time and that Mr L could have found them by carrying out some research appropriate to the level of a lay person, or perhaps by asking the financial adviser he was in contact with around that time – and I'm not persuaded that this would have needed to take very many months, as Mr L has argued. And I'm satisfied that Mr L could have approached such SIPP operators as a direct client. There was no general requirement for customers to take advice before transferring a personal pension and/or making an investment. And since Mr L would be applying to another SIPP operator as a direct client only, I don't think any SIPP operator he approached would've known about Firm S Limited's previous involvement in his SIPP business. So, I think Mr L would've most likely found an alternative SIPP operator to which he could transfer his SIPP, and would have still invested in P2P as he planned to.

Mr L argues this is simply opinion and there's no evidence to substantiate it. Of course, I can't be certain that this would have definitely happened. But I am required to make my determination based on what I think is more likely than not to have happened, i.e. on the balance of probabilities. And I still think it's more likely than not that Mr L would have proceeded to find an alternative SIPP operator to accept his SIPP business and his P2P investments.

Mr L has made several submissions in relation to his P2P investments. He says he is the only person with a full appreciation of his situation and so is in the best position to evaluate how he would have proceeded if ML had refused his SIPP business. That it was wrong to assume he was an insistent P2P investor. That at that time, his prior experience of P2P had made him realise he didn't have the necessary time, energy, skills or expertise to carry out the required amount of due diligence. And if his existing SIPP had been transferred to an alternative SIPP operator other than ML, his participation in P2P loans would have been relatively short-term; he would have bought and sold P2P loans to suit his more important commercial property investment and his exposure to P2P risks would've been correspondingly reduced.

But based on the evidence I've seen and Mr L's own testimony, I'm satisfied Mr L had a long and significant history of P2P investing (both inside and outside his SIPP) before he was ever involved with ML, and I think he considered himself experienced in it. And I'm satisfied he was keen to continue investing in P2P, albeit he also wanted to make a new investment in his sister's planned new company (though this didn't ultimately happen). Because this was the plan it appears Mr L developed himself and then took to both a financial adviser and to Firm S Limited. So, I don't think the fact ML would've refused to permit his SIPP application, on the basis Firm S Limited was misleading and potentially risking consumer detriment, would've deterred him from this course. I think Mr L had himself already decided to continue to make P2P investments and invest in his sister's planned new company. And this is not at odds with what Mr L has said in response to the provisional decision.

Although I think Mr L would've likely submitted his application to another SIPP operator who was happy to accept it on a direct application basis, I still have to consider whether it would've been reasonable for another SIPP operator, acting in accordance with the Principles and good industry practice, to accept the investments that Mr L already held - and planned to hold – in the SIPP. If no other SIPP operator should have accepted the investments into the SIPP, then I think it would be fair and reasonable to hold ML liable for Mr L's loss in any event.

So, I've considered the due diligence checks that I think a reasonable SIPP operator ought to have carried out on these investments before it should've accepted them. And whether the information it ought to have gathered should have led a reasonable SIPP operator acting in line with the Principles to decline to accept the investments into a SIPP.

What due diligence checks did ML carry out on the investments?

As the regulator has made plain, SIPP operators have a responsibility for the quality of the SIPP business that they administer. So, SIPP operators should undertake appropriate independent enquiries about the nature or quality of an investment proposed before determining whether to accept or decline it into its SIPP, which would mean making checks that go beyond simply reviewing the investment literature.

In Mr L's view, there was evidence suggesting the Platform A P2P loans were scams and linked to fraudulent activity, and that there were red flags ML should have seen and steps it should have taken to protect and represent its client's best interest. For example, he says Platform A P2P loans hadn't performed as described, loans were advertised on behalf of different borrower companies but many directors were interconnected via previous directorships, many loans followed a similar pattern before failing, and items offered as security have disappeared or are worth much less than their stated value.

But as I've said above, I'm not considering what ML did or didn't do here. Instead, I'm considering what a reasonable SIPP operator should have done before accepting the P2P investments into a SIPP. And I think that would've included being satisfied in respect of the following points:

- that the investment was a genuine asset and was not part of a fraud or a scam or pensions liberation;
- that the persons with significant control over the investment had a clear disciplinary history;
- that the investment was safe/secure;
- that the investment could be independently valued and that it wasn't impaired.

Firstly, I'll turn to the future investment Mr L planned to make into his sister's possible new company. Mr L says the documentary evidence shows that his primary objective in March 2018 was to invest in this, supported by a lesser amount in P2P. But that the only reason this wasn't realised was because of ML's high fees and restrictive terms.

I accept that this was an investment Mr L was very interested in making. But based on the early 2018 emails, it's clear that this investment was then at the very earliest stages and its exact nature wasn't yet known, because Mr L set out the steps his sister still needed to take before she could start her new company, and different ways of investing in it were raised. That said, I don't think that a SIPP operator should have refused a SIPP application because

of this. This investment was not yet a real prospect. And as ML's 2018 email made clear, there were legitimate ways for Mr L to invest in it using his pension, depending on the particular circumstances of those involved. And given that Mr L had already approached a financial adviser about this potential investment, I think it would've been reasonable for a SIPP operator to believe that he would take advice about it, including how it could be structured so that it was suitable for his needs and could be legitimately held within a pension. At such an early stage, I don't think this potential investment contained any concerning features that should've led a reasonable SIPP operator to question it further at that point.

Turning to Mr L's P2P investments. His holdings in Platform A, Platform L and Platform RS in March 2018 were transferred in specie to ML. But based on what I have seen, I don't think there's anything in these P2P investments that ought reasonably to have caused a SIPP provider to have refused Mr L's direct SIPP business. At that time, the P2P investments in question were regulated by the FCA with no disciplinary action, and I think a SIPP provider could reasonably take some comfort from that. And I'm not persuaded that Mr L couldn't have encashed these at that time if he'd been required to, albeit this may not have been something he wanted to do.

ML says it carried out due diligence on Platform A in September 2017 and was reassured that it was a well-established P2P lender, and was reassured by its accounts, repayment/default records and its underlying lending criteria. And that it also carried out ongoing due diligence on Platform A, and its repayments and returns had remained positive, with Mr L himself having received a total of £149,234 from his Platform A holdings. ML also says it carried out due diligence on the P2P platform, not the underlying loans available, but that it satisfied itself about the P2P platform's internal procedures regarding the borrowers allowed on its platform. And the number of defaulted loans formed part of ML's ongoing review process. To support this, ML has provided some documentary evidence of its due diligence on Platform L and Platform A, including copies of Platform A's accounts for 2014, 2015 and 2016. Having considered all this, I haven't seen enough to persuade me that there was anything that ML or another SIPP operator ought to have been concerned about such that it ought to have refused Mr L's SIPP business.

Following the in specie transfers to ML, Mr L made various P2P disinvestments and investments over the years, including further investments and disinvestments with Platform A and other P2P platforms. It is difficult to know the details of all of the P2P investments Mr L made; this is partly because of the structure of the investments (being various individual P2P loans chosen through various P2P platforms), and partly because of all the movements in and/or out of these investments over a matter of years.

However, it appears that Mr L is particularly concerned about the further Platform A investments he made. He's made submissions about these, which I have considered carefully. I've also considered copies of Platform A's borrowing proposals for three commercial property loans which I understand to have been the loans underlying Mr L's further Platform A investments; these loans were made to one borrower for different properties.

I've not seen evidence that ML investigated director relationships or pattern of loan business (as Mr L suggests it should have) when it first decided, and continued to decide, to accept Platform A investments in its SIPPs. But even if I thought ML should have carried out additional due diligence checks, I'm not persuaded it would have made a difference to this complaint. Because it is the information that would've likely been discovered as a result of carrying out those checks that's important here, and whether the information discovered ought to have led ML or another SIPP operator to reject Mr L's SIPP application or decide the Platform A investment was not an appropriate asset to be held in the SIPP.

And ultimately, I haven't been able to find any adverse information about the borrower (or its director) at the relevant times. So, overall, I'm not persuaded there was any information in the public realm that ought reasonably to have given ML or another SIPP operator cause for concern, such that it ought to have refused either a SIPP application from Mr L or the instructions to invest his SIPP monies through Platform A.

I'm also not persuaded that there were any signs or indications that these three P2P loans were fraudulent, as Mr L suggests. It appears that the commercial properties existed, that they were valued by a reputable chartered surveyor, and that the loans were backed by personal guarantees by the borrower's director.

It seems Mr L's concerns that these loan investments were fraudulent stems from their failure to produce the returns expected. But based on the evidence I've seen, I'm not persuaded that ML or any other reasonable SIPP operator ought to have considered that they were fraudulent.

Mr L also says ML shouldn't have allowed him to make so many high risk investments with his SIPP funds, and that he invested heavily in P2P because of ML's repeated claims it carried out due diligence checks on P2P investments and that he would be notified of ongoing changing to risk profile. But as I say, ML wasn't responsible for advising Mr L. And whether investments carry a high degree of risk does not mean that ML, acting in line with the Principles and guidance, should not have permitted them to be held in its SIPP. SIPP investors may choose to invest in high-risk investments. And while I appreciate Mr L says these investments caused him a significant financial loss, I don't think ML or another SIPP operator should've reasonably refused to permit these investments in Mr L's case on the basis they might cause him a loss in the future; that's an inherent risk of all investments.

In addition, Mr L says he should be refunded all the charges he'd paid to ML over the years, given I think ML should have declined his SIPP application. But I think Mr L would always have had to pay fees to a SIPP provider, given my finding that I think it is more likely than not that he would have found an alternative SIPP provider to invest with. Mr L says ML's fees were too high and weren't explained to him in the beginning. But I've not seen that this is a complaint point he's previously raised with ML, and I make no findings about it. If Mr L is unhappy about the level of ML's fees and that they weren't explained to him, he'd need to complain to ML about that in the first instance so that ML has the opportunity to consider this complaint point, which is required under the Regulator's rules. And if Mr L still remained dissatisfied, he could then refer that new complaint to our Service for an investigation.

Summary

Having considered the evidence provided and Mr L's and ML's comments, I don't think ML ought to have accepted Mr L's introduction of SIPP business from Firm S Limited. But I still think it's fair and reasonable to say that Mr L would've more likely than not found an alternative SIPP operator to accept the direct execution only SIPP transfer and investment instructions, and that it would've been appropriate for a reasonable SIPP operator acting in line with the Principles to accept Mr L's existing and planned investments into a SIPP; I'm not persuaded that ML or any other reasonable SIPP operator should've declined to accept these investments into Mr L's SIPP.

So taking everything into account, I think it's more likely than not that Mr L would still be in the same position even if ML had rejected his SIPP business in 2018. Therefore, while I appreciate this isn't the answer Mr L hoped for, I don't think it would be reasonable to hold ML responsible for Mr L's loss to his pension as a result of his investments.

My final decision

For the reasons set out above, I don't uphold Mr L's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 28 July 2025.

Ailsa Wiltshire
Ombudsman