

The complaint

Mr R complains that Westerby Trustee Services Limited ('Westerby') failed to exercise sufficient due diligence before accepting his pension switch to a Westerby self-invested personal pension ('SIPP') to invest in Dolphin, causing him a financial loss.

For simplicity, I refer to Mr R throughout, even where the submissions I'm referring to were made by his representative.

What happened

I've outlined what I think were the relevant key events involved in Mr R's complaint below.

I understand Mr R was referred to Firm A for advice in late 2012 by a Mr B of Firm B – an unregulated third party. And, in January 2013, Firm A recommended Mr R transfer his existing pension to a Westerby SIPP.

Westerby has said that it received Mr R's SIPP application from Firm A on 28 January 2013 and that his SIPP was opened the next day. In mid-February 2013, just under £190,000 was transferred into Mr R's Westerby SIPP from his existing pension scheme. And Mr R went on to make a number of non-standard investments with his pension monies, including £40,000 into Dolphin at the start of August 2013 (the '2013 loan note') and then a further £25,000 investment into that in February 2014 (the '2014 loan note'), both for a term of five years and to be respectively repaid in mid-2018 and early 2019.

I understand Mr R's 2013 loan note was due to mature in or around July 2018 at just over £76,000 and that he was interested in reinvesting this with Dolphin. But Westerby has said that, in late May 2018, it told Mr R that it wouldn't permit further investment into Dolphin, as while carrying out a further due diligence review, information had come to light which meant it didn't think it was prudent to do so, including reinvestment of funds at maturity. Although it said it didn't anticipate any problems with the return of existing investments at maturity.

So, Mr R started the process of switching his Westerby SIPP to a new SIPP provider ('Firm C'), to allow him to invest further in Dolphin.

On 7 June 2018, in advance of Mr R's 2013 loan note maturity date and the switch to Firm C formally taking place, Mr R signed a new Dolphin loan note application for £80,000 – being the expected maturity amount, plus an intended additional amount of just under £4,000 of his pension monies – which named Firm C as trustee. Mr R's pension transfer request form was also signed by Mr R on 7 June 2018 and sent by Firm C to Westerby on 12 June 2018, which noted that Mr R was leaving Westerby as he wanted to '*...reinvest on maturity Dolphin Loan Note with Dolphin, but unable to do so with Westerby*'.

Upon maturity in July 2018, Mr R's 2013 loan note monies were reinvested/rolled over with Dolphin via Firm C into a new £80,000 loan note and he was provided with a new certificate by Dolphin, dated 17 July 2018.

In early September 2018, after Westerby chased Dolphin and said that it hadn't received the cash from the matured 2013 loan note from Dolphin in the way it had expected, Westerby was made aware this was because the investment had already been reinvested/rolled over into a new loan note for Mr R via Firm C.

So Westerby contacted Firm C and explained that Westerby had understood that Mr R's 2013 loan note would stay with it until maturity and that it would then send the cash proceeds to Firm C as part of the transfer. Westerby said it assumed Firm C had received the loan note in advance of maturity for it to instruct the reinvestment. And Firm C confirmed to Westerby that Mr R's 2013 loan note had '*...matured in July and the client has now reinvested this with a new loan note in the name of his SIPP with [it, Firm C]. On this basis there will be no requirement for this to be transferred in-specie.*'

In the meantime, in August 2018, Mr R's 2014 loan note transferred in-specie from Westerby to Firm C. Then, on 7 February 2019, Mr R signed a new Dolphin loan note for £50,000 – being the expected maturity amount from the 2014 loan note of £48,000, plus an additional £4,000 of his pension monies. And, upon maturity at the end of February 2019, the 2014 loan note monies were also reinvested/rolled over by Mr R into a new loan note with Dolphin via Firm C.

I understand Mr R's Dolphin investments are now valued at nil.

Mr R's complaint

Mr R wrote to Westerby, via his representative, with a letter of claim in October 2020. He said, in summary, that it didn't do enough due diligence on the introducer or the Dolphin investment, which was unregulated and high-risk, and it shouldn't have accepted his applications. He said he was a retail customer, who is by no means a sophisticated or high net worth individual. And that this has caused him to lose out.

Westerby replied in early January 2021. It said, amongst other things, that:

- In May 2018, Mr R asked Westerby whether it would still accept Dolphin investments within its SIPPs, as his 2013 loan note was approaching maturity. It confirmed it was no longer permitting this investment, so Mr R switched his pension funds to a new SIPP provider.
- In or around late 2018, it became aware of delays in repayment of loan notes at maturity. At that point interest was still being paid, although those have since ceased.
- Had it not permitted the Dolphin investment within its SIPPs then Mr R would have found another SIPP provider that did. This is supported by Mr R's actions in 2018 in switching to another provider to invest further in Dolphin when Westerby wouldn't permit that anymore.

Mr R came back to our Service a few weeks later. And, in February 2021, we made Westerby aware that Mr R had complained via our Service.

Mr R has told our Service in his submissions, amongst other things, that:

- He was interested in moving his pension, as existing returns were disappointing. And he thought this would give his pension a boost, as he'd planned to retire within a few years.
- Mr R came across Firm B online. He saw and discussed the Dolphin investment with Mr B, who told Mr R he'd invested a large proportion of his own pension in Dolphin

and then put him in touch with Firm A. Lots of the discussions were by phone or in person. And Mr B provided Mr R with all the Dolphin documents to sign.

- At the time Mr R knew that Mr B and Firm A used to work together and he thought they were aligned and one and the same.
- All conversations in respect of the Dolphin investment were positive, no concerns were raised by Mr B or Firm A. Mr R thought the investment was safe and that he'd receive a return of capital, plus interest at the end of the term.
- In 2018, Mr B and Mr R discussed switching to a new provider to invest in Dolphin further, which he wanted to do. And Mr B arranged the switch.
- This was Mr R's main pension provision. He had another small scheme through his current employer. And he would have otherwise looked for different or mainstream investments, seeking a return around 7-11%.
- He first became aware there might be an issue with Dolphin in early 2019 as he didn't receive interest payments. And because of a website set up by investors around that time. It was this that led him to contact his representative.

Westerby went on to provide us with its information and comments in response to Mr R's complaint. An Investigator reviewed Mr R's complaint and said it should be upheld. And, while Mr R accepted their findings, Westerby responded with further comments. Amongst other things, it said that:

- We haven't taken into account that when Westerby informed Mr R in 2018 that it wouldn't permit his reinvestment upon maturity into Dolphin that he moved his pension monies elsewhere to a new SIPP provider. And that new provider instructed reinvestment of Mr R's SIPP pension monies into Dolphin without Westerby's authority as existing scheme trustee. Westerby wouldn't have permitted the reinvestment of the maturing loan note.
- Mr R's 2014 loan note was also transferred to the new SIPP provider.
- Westerby therefore can't be held responsible for any losses suffered by Mr R, he and the new SIPP provider acted contrary to Westerby's decision not to allow reinvestment or new monies to be invested in Dolphin.
- It was Mr R's decision to actively seek out another SIPP provider who'd allow this and/or the new SIPP provider's decision to permit the investment which exposed him to the potential losses.

Because no agreement could be reached the case has been passed to me for a decision.

I let Mr R know that I intended to reach a different outcome to our Investigator and that I didn't intend to ask Westerby to do anything, for largely the same reasons as those set out below.

Mr R didn't agree. He said, in summary, that:

- Mr R also has a complaint against Firm C with our Service. Firm C has said that its liability runs from the date that Mr R's SIPP was established with it and is therefore limited to the top up payments he made with it rather than the maturity value, as his existing Dolphin loan notes were transferred in specie to it from Westerby.
- We need to decide when we deem the loss to run from and why. For example, if the initial loan note made via Westerby paid out then the loss runs from the reinvestment via the new SIPP provider, but if the loan notes were transferred in-specie then the initial exposure to the loss results from Westerby's lack of due diligence.
- It's clear the loss occurred because of exposure to the risk, rather than because of the investment itself. So the loss suffered by Mr R came about at the point he initially

invested in Dolphin (i.e. he lost his money at that point) because of the inherent investment risk, which Westerby permitted within his SIPP.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I'm not asking Westerby to do anything, for the reasons below.

When deciding what's fair and reasonable in all the circumstances of this complaint, I need to take account of relevant law and regulations, regulator's rules, guidance and standards, codes of practice and, where appropriate, what I think was good industry practice at the relevant time.

While I've considered the entirety of the submissions the parties have provided, the purpose of my decision isn't to comment on every point or question, rather it's to set out my decision and reasons for reaching it.

My decision focuses on what I consider to be the central issues. In this case, while Mr R made a number of investments via his Westerby SIPP, I think the crux of this complaint concerns the Dolphin investment – Mr R has said that he switched to the Westerby SIPP to invest in Dolphin and that it shouldn't have accepted his applications to do so. So this is what I've addressed here. And I don't intend to comment on Mr R's separate Firm C complaint.

As set out above, the initial 2013 loan note investment of £40,000 that Mr R made via his Westerby SIPP, as well as the 2014 loan note investment of £25,000 he made via this, were due to respectively mature at around £76,000 in July 2018 and £48,000 in February 2019. As such, both Dolphin investments that Mr R made via his Westerby SIPP were worth significantly more (almost double, in fact) at the point of maturity than the amount that he'd initially invested in this.

But, at the point these were due to mature, Mr R chose to reinvest/roll over the increased amounts back into Dolphin with another SIPP provider, Firm C, along with further monies, as Westerby would no longer permit the Dolphin investment within its SIPPs. And I understand that the 2018 reinvestment of the 2013 loan note in particular was instructed via Firm C, when there's evidence from the time that Westerby had instead expected to receive the matured cash back into Mr R's SIPP. And when Westerby has said that as existing scheme trustee it wouldn't have otherwise allowed the reinvestment of that maturing loan note.

In addition, I'm also aware from experience that customers were largely still getting their money back from Dolphin in the form of returns and redemptions until June 2019, albeit seemingly with delays. So it seems likely to me, on balance, that Mr R could have gotten his investment monies back if the loan notes taken out with Westerby had been allowed to mature when they were due to in mid-2018 and early 2019, rather than being reinvested/rolled over into new investments via another provider in the way these were.

So, for these reasons, I'm of the view that, in the particular circumstances of Mr R's case, even if Westerby did not carry out adequate due diligence at the outset and/or on an ongoing basis (and I make no finding on that point), it is not fair and reasonable to require Westerby to pay compensation to Mr R as I don't think there's a financial loss that it can fairly be held responsible for.

In summary, while I recognise Mr R's strength of feeling on the matter and I understand this will be disappointing for him, I'm not asking Westerby to do anything for the reasons given above.

My final decision

For the reasons given, I'm not asking Westerby Trustee Services Limited to do anything.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 1 July 2025.

Holly Jackson
Ombudsman