

## The complaint

Mrs H complains about the actions of Interactive Investor Services Limited ("IISL") in respect of her late husband's self-invested personal pension ("SIPP"). She says it was negligent when it allowed a trade to be placed without clarifying details of the financial adviser involved. And that IISL allowed a trade to be placed after her husband had passed away. Mrs H says this has caused her distress and has led to her receiving less from her late husband's pension.

Mrs H is being assisted with the complaint by her daughter. For ease I'll refer only to Mrs H.

## What happened

The late Mr H set up an IISL SIPP and he arranged for funds from an existing pension he held to be transferred to it, with a little under £80,000 being transferred to IISL on 22 April 2020. Mrs H has told this Service that this was arranged following advice from a financial adviser, whom I'll refer to as SWS.

Mrs H has explained that her husband was put in touch with SWS by another financial adviser that had been dealing with Mr H's Will and House Trust. Mr H had believed that SWS was a regulated financial adviser. It's only since Mr H has sadly passed away that his wife now understands that SWS was not regulated.

The funds in Mr H's SIPP were used to trade shares in MBH Corporation PLC ("MBH"), a company listed on the Frankfurt Stock Exchange. The first trade was placed over the phone on 23 April 2020. IISL has provided recordings of three telephone calls that took place on this day. I've summarised these calls below.

- 23 April 2020 at 14.26

This was to IISL from someone claiming to be Mr H. While being taken through security, the caller confirmed that they didn't have their mobile phone to hand so they were unable to receive a security code. Instead the caller completed security by providing correct password details for Mr H's account. Having passed security, the caller confirmed that they wished to place a trade for 100,000 shares in MBH. The IISL call handler confirmed that they were aware from previous trades that MBH was quite an illiquid market so they explained that Mr H may only get a partial order. After confirming the trade details, the IISL call handler explained that Mr H may be better off settling in euros but that he'd need to place his own foreign exchange from sterling to euros once the trade had been contracted.

The call handler explained they'd submit the order but online it would show as a frozen order as it would be worked manually in the background. So they said Mr H should check back in a few hours to find out what was happening.

- 23 April 2020 at 14.38

The same call handler called Mr H 12 minutes later to confirm the order had gone through. However, there was confusion as Mr H didn't recall the order. After the call

handler repeated that he was calling from IISL about Mr H's trading account Mr H said that he knew what the call handler was talking about.

The call handler explained that the trade had gone through and said that Mr H should check back on his account and he explained what Mr H would need to do once the trade contracts. Mr H asked if he would receive confirmation by email but the call handler said Mr H should probably just check on the account online in about an hour. Mr H said that he didn't know how to access the account online because the account number and password keep changing and he said he hadn't been on it [the online account] yet.

The call handler said that Mr H could call back and they could do the foreign exchange for him. Mr H asked for the phone number to call as he didn't have it. The call handler said it was on the front page of the website and he asked how Mr H had got through to IISL earlier. Mr H said he got through to IISL through the financial adviser. And he went on to explain that SWS had been sorting it all out for him. Mr H said that he would call the next day to sort it out but the call handler said that it would be best to call later that day so the foreign exchange and share purchase dates match. The call handler confirmed that he would be sending an email to the relevant department to manually book out the trade properly.

- 23 April 2020 at 15.25

A caller claiming to be Mr H called IISL. The caller said they didn't have their phone with them so they were unable to receive a security code. They instead completed security by providing details from the password. The same call handler from the earlier calls confirmed the foreign exchange conversion from sterling to euros. And reconfirmed that the trade was being done on a two day settlement basis. The call handler asked the caller if he wanted to view the trade and contract note online. The caller confirmed that he did and that he had everything to do that. The caller then asked for his mobile number to be updated and successfully answered some additional security questions, enabling this to be done.

IISL has also provided contract notes showing MBH shares being bought and sold by Mr H's SIPP numerous times over the next year.

Mr H passed away on 3 March 2021 but the contract notes show that a trade was placed on 13 April 2021, purchasing shares to the value of €55,372.97.

Mrs H has told us that she notified SWS that her husband had passed away the day after he died. By September 2021, Mrs H was concerned that she was no further forward in obtaining her husband's SIPP funds so she contacted IISL directly. It was at this point that she found out that SWS hadn't notified IISL that Mr H had passed away. IISL suggested Mrs H contact her financial adviser as Mrs H had said that she had already given SWS the necessary paperwork.

Mrs H called IISL again in January 2022. IISL confirmed that it still hadn't received any paperwork confirming Mr H had passed away. IISL gave Mrs H the address to send the necessary paperwork to. Mrs H dealt directly with IISL from this point forward. She called IISL again in February 2022 to see if her husband's SIPP had been transferred over to hers. IISL confirmed that they were still waiting for documents to be returned. IISL received all the necessary paperwork, and funds held in Mr H's SIPP, a little under £25,000, were transferred to Mrs H's SIPP in April 2022.

Mrs H believed her husband's SIPP held more funds so she queried this with IISL. It was

then discovered that a trade had been placed through her husband's SIPP the day after he died. And it came to light that SWS was not an authorised financial adviser and that someone other than Mr H had been placing trades through his SIPP account.

In September 2022, Mrs H complained to IISL about the trade placed after his death and that Mr H had mentioned to IISL that he had a financial adviser but IISL made no further enquiries about who this was. And Mrs H also complained about the service she received from IISL after notifying it that her husband had passed away. She said she'd been unable to speak to anyone about her husband's SIPP.

IISL issued its final response to the complaint. In summary it said that:

- It is evident a third-party was being relied on to operate Mr H's SIPP account and that Mr H had shared his account and personal details to facilitate this. Sharing account details in this manner compromises IISL's ability to secure the account.
- Whilst IISL is now aware it was not Mr H that placed the trade in April 2021, there was nothing in the call when this was arranged that would have highlighted to the representative this was not Mr H. IISL was not aware Mr H had passed away at that point. And having reviewed the calls, IISL has concluded there were no failings by it in respect of the trade being placed on the account after Mr H's death.
- In terms of Mrs H being unable to speak to anyone about her husband's SIPP, it said that because it hadn't received Mr H's death certificate when she called in September 2021, it wasn't able to discuss Mr H's account with her. And it suggested that Mrs H speak to her financial adviser again to see where this was because she'd explained that she had already provided this to her adviser.
- The actions taken on Mr H's SIPP were outside of IISL's control although it didn't think this was as a result of any failings on the part of IISL. However, it thought it was clear from the conversations held between Mrs H and its Financial Crime Prevention Team that Mr H's may have been a victim of a scam outside of IISL. IISL didn't wish to benefit from this activity so it said that it would reimburse the associated fees and charges, totalling £1,226.47.

Mrs H wasn't happy with IISL's investigation into the complaint so she referred the matter to this Service for consideration.

One of our Investigators reviewed the complaint and thought that it should be upheld. This was because the Investigator thought IISL had sufficient information to establish that Mr H was not in control of his pension fund and it ought to have been concerned that Mr H could have been receiving unauthorised advice. However, the Investigator didn't believe IISL would have had any reason prior to the telephone call at 14.38 on 23 April 2020 to know this.

So the Investigator thought the transfer of Mr H's personal pension to the IISL SIPP would have happened anyway. But they thought IISL ought to have declined the investment which would have prevented the losses suffered by Mr H, and ultimately Mrs H. The Investigator also acknowledged that although Mrs H may have found it frustrating when she was trying to speak to IISL after her husband had passed away, he thought that IISL did try to answer her questions.

Mrs H accepted the Investigator's opinion. IISL didn't accept the Investigator's opinion. In summary it said:

- All reasonable due diligence steps were taken and MBH was a genuine investment, that was subject to open and transparent market valuations.

- Disproportionate significance seems to have been given to elements of the call held between Mr H and IISL on the 23 April 2020 at 14.38. In particular, the initial confusion Mr H appears to have encountered has been interpreted as evidence of Mr H being unaware of the trade and an equally unequivocal inference being drawn that someone may have been taking advantage of him.
- IISL does not support or have any arrangements in which advisers introduce business. In these terms, the fact Mr H mentions he has an adviser is irrelevant and would not necessitate an execution only service provider to check the FCA's register. He was clearly aware of the transaction and was content that it had been carried out. To suggest otherwise by inference fails on reason of the evidence presented.
- It was Mr H's responsibility to satisfy himself of the credentials of anyone he was placing reliance on for advice. This was not IISL's responsibility.
- Mr H was ill advised, but ultimately had been responsible for the transactions placed on his account – either because he placed them himself, or because they were placed on his behalf by a third party with whom he'd shared all credentials and security details necessary to access his account.
- IISL's terms and conditions (a copy of which it provided) clearly state that customers are responsible for the confidentiality and use of their SIPP Account and Security Data and that they must make sure that their Security Data remains confidential at all times and that they must take all responsible steps to stop any other person using their Security Data and to not disclose their Security Data to any other person.
- The terms and conditions go on to clarify that IISL will only be responsible for losses suffered where the customer tells it that they have not authorised a transaction and where such losses are caused by its negligence, fraud or wilful default.
- At no point during the period in which his account was being operated did Mr H ever report or suggest that he had not authorised any of the transactions on his account.
- ISL believes the considerations, and findings subsequently drawn, have been based on an imprecise and misleading characterisation of the FCA Guidance which simply does not reflect the circumstances of the investment made by Mr H.
- While accepting there were some elements of IISL's interactions with Mr H that could have been handled differently, it does not accept that those were matters which could have been interpreted – in real-time by its call handling agent – with quite the same definitive certainty as has been portrayed with the benefit of hindsight.

### *Provisional decision*

As agreement couldn't be reached, the complaint was passed to me to consider and having reviewed all the information, I thought that it should be upheld. But this was for slightly different reasons to the Investigator. So I issued a provisional decision in May 2025.

In summary I said that I thought it was reasonable for IISL to have accepted Mr H's SIPP application and initial investment instruction into MBH. However, I thought the call handler ought to have questioned Mr H during the call on the 20 April 2020 at 14.38 as to whether it was him that had made the earlier call to IISL. Had the call handler done this, I'm satisfied that Mr H would have explained that it was his financial adviser, SWS, or that he at least believed it was her. And I thought this ought to have started a chain of event which would have ultimately led to IISL recognising that Mr H had shared his account and security details.

And IISL ought to have reversed the initial trade, if this would have been possible. Or, if it was not possible to reverse it, IISL should have sold any MBH shares that had already been acquired at the earliest possible opportunity. And I said I was satisfied that regardless of whether Mr H's IISL SIPP continued or whether it had been transferred to another provider, Mr H would not have continued to invest in MBH.

In terms of the service Mrs H received after trying to notify IISL that her husband had passed away, I said that I'd not seen that IISL acted unfairly in this regard.

### *Responses to my provisional decision*

Mrs H responded to confirm that she accepted my provisional decision.

IISL responded. It confirmed that it didn't agree with the provisional findings in respect of the call on 20 April 2020 at 14.38 and it provided detailed submissions to support its position, which I've summarised below:

- In the absence of any breaches of contract, rules, principles or guidance by IISL, there is no basis to uphold a complaint against it.
- The provisional decision concludes that IISL ought to have asked further questions during the second telephone call on 23 April 2020 at 14:38 (the "second call"), which was with Mr H. The provisional decision further concludes that, had further questions been raised, it would have led to a chain of events which would have led to Mr H identifying that his financial adviser was not authorised, and taking different investment decisions as a result. IISL considers that this ignores the conduct of Mr H during the second call, and his actions subsequent to that call.
- Mr H did not suggest that the order had been made without his approval or authority, nor did Mr H suggest that he did not in fact wish to make the order. This strongly indicates that, even had further questions been asked by IISL, Mr H would have wished to continue with the order made during the first call.
- Had Mr H not wished for his financial adviser to have such access, it is to be expected that Mr H would have taken steps after the second call to halt his adviser's access to his IISL account. As Mr H did not do so, the only reasonable conclusion is that Mr H was happy for his adviser to have such access.
- IISL acknowledges that Mr H's willingness to allow SWS to access his trading account may well have differed had Mr H been aware that SWS was not a regulated financial adviser.
- There was no reason for IISL to question the regulatory status of Mr H's adviser (which the provisional decision acknowledges), there is no reason to expect that any further questions asked by IISL during the second call would in fact have identified that SWS was not authorised. Rather, it is more likely that further questions would have focussed only on the method of access to Mr H's account being used, as IISL enables customers to authorise third parties to access their accounts via their own separate login credentials. It is apparent that Mr H voluntarily shared his account details with his financial adviser. IISL highlighted to Mr H through its terms and conditions that Mr H should not do that, as it impeded IISL's ability to ensure the security of the account. If Mr H chose to ignore that and shared his account details, that was Mr H's choice and not IISL's responsibility to remedy.
- It is, therefore, not fair or reasonable to conclude that, had IISL acted differently, it is more likely than not that it would have become apparent that SWS was not properly regulated. To conclude otherwise suggests that IISL's call handler would have drawn conclusions which are only apparent with the benefit of hindsight.

- Whilst the provisional decision acknowledges that the call handler's actions should be considered in real-time, and not with the benefit of hindsight, that is precisely what the provisional decision then goes on to do.
- Mr H did not, however, take any action to prevent such action occurring in future. Rather, Mr H indicated during the course of the second call that he was aware of the trading activity, and that he wished it to proceed. There is, therefore, cogent evidence that Mr H would have continued with the trade his financial adviser had placed earlier that day. Whilst it was a breach of IISL's terms and conditions for Mr H to share his login information with another person, that was a breach by Mr H, and IISL was not obliged to ensure Mr H complied with that term of his contract.
- There is no evidence at all that any further questions asked by IISL would have led to a chain of events resulting in Mr H identifying that his adviser was not properly authorised. There is also no evidence that, had Mr H identified this, he would have wished to cease taking advice from that individual, or would have reversed the trades carried out or taken any different investment decisions. These are purely assumptions made in the provisional decision.
- The provisional decision also concludes that IISL should have refused further trades in MBH shares on Mr H's account.
- The provisional decision also seeks to place obligations on IISL to raise further enquiries and to insert itself into the relationship between IISL's customer and their financial adviser. As IISL offers an execution only, non-advised service, it is not unreasonable to expect that some customers will take financial advice in the background. The mere existence of a financial adviser was not, therefore, any reason to cause IISL to raise further enquiries, and IISL is not under a duty to interrogate that relationship.
- As such, and while IISL disputes that it breached any duty to Mr H, it is in any event not fair or reasonable to conclude, in the lack of any evidence to support the same, that any action of IISL caused Mr H's SIPP (and therefore Mrs H) any loss.

## Redress

- Notwithstanding that the provisional decision should be amended, for the reasons explained above, to dismiss Mrs H's complaint, if the Ombudsman continues to uphold the complaint against IISL, IISL considers that the Ombudsman should revise the redress it has awarded Mrs H.
- At no stage during the second call did Mr H indicate that he did not wish to make the order. Nor has the provisional decision concluded that the order was not one which it was permissible for Mr H to make (on the contrary, the provisional decision acknowledges that the investment was in freely tradeable shares listed on a regulated exchange). As such, any redress which suggests that this order should not have been placed, or should have been reversed, ignores the best available evidence of what Mr H in fact wished IISL to do – which was to place the order for 100,000 shares in MBH. Any redress should therefore proceed on the basis that these shares were present in Mr H's SIPP, and should not seek to reverse that position. To do otherwise runs counter to the best available evidence of Mr H's intention as at 23 April 2020.
- By requiring IISL to assume that any lost value in the SIPP would have been invested on the same basis as the FTSE UK Private Investors Income Total Return Index/average rate from fixed rate bonds, the Ombudsman assumes that it was incumbent on IISL to ensure Mr H's SIPP held appropriate investments for his risk appetite, i.e. an advisory relationship. That is not the basis on which IISL and Mr H contracted, and IISL was not under an obligation to provide Mr H with a mix of

investments which met his risk profile. Rather, it was for Mr H to select the investments within his SIPP. In the absence of any evidence as to what Mr H would have invested in if not MBH shares, any redress calculation ought to proceed on the basis that Mr H's SIPP investments would have remained as they were following the purchase of MBH shares on 23 April 2020.

### **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.

IISL has provided detailed submissions to support its position and I'm grateful to it for doing so. I've considered these submissions in their entirety. However, I trust that IISL won't take the fact that my decision focuses on what I consider to be the central issues as a discourtesy. To be clear, the purpose of this decision isn't to comment on every individual point or question the parties have raised, rather it's to set out my findings and reasons for reaching them. Having carefully reconsidered all the evidence I'm partially upholding Mr H's complaint.

I'm required to determine this complaint by reference to what I consider to be fair and reasonable in all the circumstances of the case. When considering what is fair and reasonable in the circumstances, I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time.

I'd also 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*

The Principles for Businesses ("PRIN") which are set out in the FCA's Handbook "are a general statement of the fundamental obligations of firms under the regulatory system" (PRIN 1.1.2G – at the relevant date). I consider PRIN and the Conduct of Business Sourcebook ('COBS'), which can also be found in the FCA handbook, of particular relevance.

The below is not a comprehensive list of the rules and regulations which applied at the time of the advice, but provides useful context for my assessment of IISL's actions here.

PRIN 2: A firm must conduct its business with due skill, care and diligence.

PRIN 6: A firm must pay due regard to the interests of its customers and treat them fairly.

COBS 2.1.1R: A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).

In addition, in *British Bankers Association, R (on the application of) v The Financial Services Authority & Anon* (2011) EWHC 999 (20 April 2011) Ousely J said:

*"Indeed, it is my view that it would be a breach of statutory duty for the Ombudsman to reach a view on a case without taking the Principles into account in deciding what would be fair and reasonable and what redress to afford. Even if no Principles had been produced by the FSA, the FOS would find it hard to fulfil its particular statutory duty without having regard to the sort of high level principles which find expression in the Principles, whoever formulated them. They are the essence of what is fair and reasonable, subject to the argument about their relationship to specific rules" (para 77)."*

*"...The Principles are best understood as the ever present substrata to which the specific rules are added. The Principles always have to be complied with. The specific rules do not supplant them and cannot be used to contradict them. They are but specific applications of them to the particular requirements they cover. The general notion that the specific rules can exhaust the application of the Principles is inappropriate. It cannot be an error of law for the Principles to augment specific rules" (para 162).*

In September 2009 the FSA published a thematic review report on SIPP's which stated:

*"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 customers and treat them fairly') insofar as they are obliged to ensure the fair treatment of their customers. COBS 3.2.3(2) states that a member of a pension scheme is a 'client' for COBS purposes, and 'Customer' in terms of Principle 6 includes clients..."*

These comments were made in relation to the quality of the business that a SIPP operator accepts. And as IISL will be aware, SIPP providers are required to carry out sufficient due diligence when accepting SIPP business and allowing investments in their SIPP.

Mrs H hasn't complained that IISL shouldn't have accepted her husband's SIPP business in the first place. But she does have concerns that it allowed a trade to be placed after his death. And that Mr H had mentioned to IISL that he had a financial adviser but IISL made no further enquiries about who this was. Mrs H is also unhappy with the service she received from IISL after notifying it that her husband had passed away. So I think the comments above are still relevant in this instance because it's clear from the regulator's comments that SIPP operators were obliged to ensure fair treatment of their customers.

As such, I've carefully considered IISL's obligation to treat its customers (and specifically Mr H and latterly Mrs H) fairly when deciding what is fair and reasonable in the circumstances of this complaint.

#### *The establishment of the SIPP and MBH trades*

When considering whether IISL treated Mr H fairly, it's appropriate to take an inquisitorial approach. So I've considered IISL's due diligence when accepting Mr H's SIPP business. However, I've not seen anything that would lead me to conclude that IISL should have refused to accept Mr H's SIPP application and the transfer from his previous pension arrangement.

I've also considered whether it was appropriate for IISL to allow the MBH investment to be held in Mr H's SIPP.



MBH was listed on the Frankfurt and Dusseldorf Stock Exchanges and doesn't appear to have been fraudulent or a scam. The information I've seen suggests that MBH shares were being regularly traded and IISL has said that there were no liquidity issues with this investment. And although it was a high risk investment, that's not a reason for IISL to have refused Mr H's request to invest in MBH. IISL was not required to assess the suitability of the investment for Mr H. And having listened to the first call on 20 April 2020, I don't think there was any reason for IISL to question whether it was Mr H that had called to place the initial investment in MHB. So, from the information I have seen, I don't think IISL would have had any concerns when it initially received the instruction for Mr H's SIPP to invest in MBH.

However, it is now known that someone else had access to Mr H's SIPP security information. And it appears it was not Mr H that was placing the trades in MBH through the SIPP. It was instead a man claiming to be him.

IISL has previously said that it doesn't accept authority for a financial advisor to manage an account of a client in any instance. Although in its most recent submissions, it's said that a third party can be authorised to have access to an individual's account with their own log on details. I find these statements somewhat contradictory on the face of it. But for reasons explained later in the decision, on balance, I think it's unlikely that Mr H would have gone on to authorise SWS - or another individual connected to her - to have access to his SIPP account. So I haven't considered it necessary to seek clarification on this point.

IISL has provided a copy of the terms and conditions relevant to Mr H's SIPP. These state that:

*"14 Your obligations*

*...*

*14.4 You must make sure that your Password remains confidential at all times and you must take all responsible steps to:*

*(a) stop any other person using your Password;*

*(b) not disclose your full Password to any other person including any of our employees (whether over the telephone or otherwise);...."*

The fact that someone else had access to Mr H's password and SIPP account information only came to light after Mr H had sadly passed away. So we don't know the circumstances in which this happened and what Mr H's understanding of matters was. However, on balance, I think it's likely that Mr H shared his account details willingly with SWS – as he believed this adviser was managing his SIPP for him.

I don't think Mr H understood that this was in breach of the SIPP terms and conditions. I say this because I've listened to the call Mr H had with IISL on 23 April 2020 at 14.38. As can be seen from the call summary set out earlier in this decision, after the initial confusion about who was calling, Mr H told the call handler that he got through to IISL through the financial adviser. And he went on to explain that SWS "had been sorting it all out for him". I don't think Mr H would have mentioned the financial adviser if he'd understood that the adviser shouldn't be accessing his account using his security details. I think this is supported by Mrs H's submissions in which she's told this Service that her husband didn't ever receive any paperwork about the SIPP. And the email address linked to the account was not his. So I think it's unlikely Mr H had seen a copy of the SIPP terms and conditions.

I've also considered whether IISL ought to have realised Mr H wasn't in control of his SIPP. And like our Investigator concluded, I do think there were some red flags that IISL ought reasonably to have picked up on.

As I've said above, I've not seen anything that ought to have raised suspicion that it wasn't Mr H calling in the first call (at 14.26) where the initial trade was placed. The caller passed security without a problem, albeit by providing password details rather than the security code that would have been sent to Mr H's phone. The reason given for this was because the caller said he didn't have his mobile phone with him. During this call after the trade was placed, the caller said they would check the account online later to see when the trade contracted.

However, the same call handler called Mr H back, presumably on his mobile number, 12 minutes after this call.

I should firstly say that I appreciate Mr H is unlikely to have been the only client the call handler was dealing with at that time, so I wouldn't expect them to have remembered everything that was discussed in the earlier call. And I accept that it's far easier when listening back to recordings of calls to see where things ought to have been done differently. And that it would have been difficult for the call handler dealing with this in real-time to identify *all* the red flags I've identified when listening back to these calls. Having said that, I do think Mr H said enough in this second call alone, for the call handler to have raised suspicion that it was not Mr H that had placed the earlier trade.

I think it's clear Mr H wasn't expecting this call, and didn't recall speaking with IISL only 12 minutes earlier. The call handler had to say several times what he was calling about before Mr H said "*oh right, I've got you now*". However, I don't think this initial confusion in isolation was enough to have caused concern.

After confirming the trade had been filled the call handler then went on to explain what Mr H needed to do once the trade had contracted. Mr H asked if he would receive all the information in an email to which the call handler said that he would be able to view it online. Mr H said he didn't know how to get into the account online because the passwords and numbers kept changing. While this contradicts what the initial caller said about checking the account online, I accept the call handler may not have picked up on this at the time.

The call handler then suggested Mr H called IISL back a little later so the foreign exchange could be done over the phone but Mr H said he didn't have the telephone number for IISL. The call handler was clearly aware that they'd already taken a call from someone claiming to be Mr H because they asked how he'd got through to them earlier. Mr H said it was all "*through the financial adviser, [SWS] was sorting it*".

I maintain that it was at this point, given Mr H's initial confusion and not having IISL's number, despite the call handler knowing he'd called earlier, that the call handler ought to have questioned Mr H about the earlier call. IISL thinks I've reached this conclusion looking back with the benefit of hindsight. I disagree, I'm satisfied Mr H said enough during this second call alone to have raised suspicion with the call handler, at that time. Even if the call handler didn't recall the first call, he knew that Mr H (or someone claiming to be him) had called earlier to place the trade because the purpose of the second call was to confirm the trade had gone through.

I think this, in combination with the confusion at the start of the call, ought to have raised sufficient suspicion with the call handler and ought to have led to further questions being asked, specifically around whether Mr H had called earlier to place the trade himself. I think it's more likely than not, had this question been asked, Mr H would have said it was his financial adviser that had called and not him. I say this because, for the reasons explained earlier, I'm satisfied Mr H wasn't trying to hide that the financial adviser was involved.

I'd also like to clarify here that I don't think it would have been immediately clear to the call handler during this call at 14.38, that someone may have been taking advantage of Mr H.

However, as I've said above, I think the call handler was given sufficient information by Mr H that ought to have led them to ask some further questions about the earlier trade that had been placed. And I'm satisfied that had this been done, it's more likely than not, IISL would have discovered that Mr H hadn't placed the trade himself and instead someone had called claiming to be him after Mr H had shared his account and security information with SWS. So had the call handler asked the right questions of Mr H, I think IISL would have discovered that it was not him placing the trades and this would have led to it discovering that Mr H had breached the SIPP terms and conditions.

IISL says that it highlighted to Mr H through its terms and conditions that he should not share his account details, as it impeded IISL's ability to ensure the security of the account. It says if Mr H chose to ignore that and shared his account details, that was his choice and not IISL's responsibility to remedy and it says it was not obliged to ensure Mr H complied with the terms of his contract. I disagree, I'm satisfied IISL had a responsibility to look after Mr H's interests and treat him fairly. So I think it would have been fair and reasonable for IISL to have asked further questions in order to ensure the ongoing security of the SIPP. And IISL ought to have taken action to understand the circumstances in which he'd shared this information.

I also maintain that further questioning would ultimately have led to Mr H discovering that it was not in fact his financial adviser that had accessed his account and it was instead a man that had called and impersonated him. I think this would have been a concern to Mr H as he believed it was SWS (his financial adviser, a woman) that would be managing his SIPP investments.

IISL doesn't think this would ultimately have led to Mr H stopping further transactions. I disagree. I think if appropriate questions had been asked when I think they should have been, Mr H would have discovered that:

- he'd breached the SIPP terms and conditions by doing as SWS had told him and sharing his account information;
- it was not SWS that had placed the initial trade;
- SWS had shared Mr H's account security information with someone else; and
- another person had impersonated Mr H in order to make the trade.

Overall, on balance, I think discovering all of the above would have led Mr H to question the arrangement he had with SWS.

And I think that if the IISL call handler had asked the appropriate questions when I think they ought to have done, IISL would also have discovered this arrangement. And I consider it ought to have been concerned at that point, that another individual - and not who Mr H believed had access - had access to Mr H's SIPP.

I think this ought to have led it to take appropriate action, in particular, I think it ought to have put a stop to the initial MBH trade if it was not too late to do this. And if it was too late, it ought to have sold any MBH shares that had already been acquired at the earliest possible opportunity. IISL has confirmed there were no liquidity issues with this investment, so this ought to have been possible.

In my provisional decision I said that I thought this would also have started a chain of events whereby Mr H would ultimately have discovered that the woman he thought was his financial adviser - SWS - was not regulated to provide financial advice. IISL disagrees on this point. It says there was no reason for it to question the regulatory status of Mr H's financial adviser. However, I don't think I need to make a finding on this particular point in my final decision

because, for the reasons explained above, I don't think Mr H would have been happy for SWS to continue managing his SIPP once he'd discovered she'd shared his account security information with another individual.

It's not clear what would have happened at this point, whether this would have led to IISL closing Mr H's SIPP - as its terms and conditions would have entitled it to do - and it being transferred to another provider and Mr H's funds being invested elsewhere. Or, whether Mr H would have kept his IISL SIPP and invested, without SWS's involvement, possibly after seeking advice from another financial adviser. I would like to stress here that I am aware that IISL couldn't provide financial advice to Mr H so it wouldn't have been able to recommend suitable investments for him. But on balance, I think it's more likely than not that Mr H would have chosen to do something different with his SIPP funds and would not have continued with the MBH investments. I say this because I don't think Mr H would have trusted SWS with his pension fund, knowing she had already shared his account information with another individual. And I think it's unlikely that Mr H - who appears to have been a low risk investor - would have wanted to continue to trade a high risk investment.

Overall, by failing to ask these questions of Mr H, when I think IISL ought to have been suspicious, I think IISL failed to act with due skill, care and diligence. And it failed to act in accordance with the best interests of its client - Mr H. I'm therefore still upholding this part of Mrs H's complaint and I've set out below what IISL needs to do to put matters right.

#### *Mr H's telephone number being changed and the trade placed after he'd passed away*

Part of Mrs H's complaint is that IISL allowed the mobile number on Mr H's SIPP to be changed. This occurred less than an hour after the call with Mr H at 14.38 during a subsequent call with someone claiming to be Mr H. Mrs H is also unhappy about the trade that was placed after her husband had passed away. However, it's not necessary for me to make a finding on these particular points because I've already concluded that, had IISL done what it ought to have done and asked further appropriate question following what Mr H said to the call handler, no further MBH trades would have been placed through Mr H's SIPP.

#### *The service Mrs H received after her husband passed away*

Mr H passed away in March 2021 but it took more than a year for his SIPP to be transferred over to Mrs H. However, having considered matters further, I don't think IISL acted unfairly when dealing with Mrs H about this matter.

Mrs H has explained that she told SWS that her husband had passed away and was led to believe that SWS would notify IISL accordingly. This meant that it wasn't until September 2021 that Mrs H first contacted IISL. So I can't hold IISL responsible for this initial delay in processing matters, because it wasn't aware Mr H had died.

I've also listened to the calls Mrs H had with IISL on 13 September 2021, when she called IISL directly. While I accept it would have been frustrating that IISL was unable to disclose account information, I think it was right not to do this because at that time, it hadn't been notified that Mr H had passed away. And it didn't have the necessary authority to speak directly to Mrs H about her husband's SIPP. And because Mrs H had said that everything was being dealt with through the financial adviser, I don't think it was unreasonable that IISL directed Mrs H back to the adviser to chase this matter up. IISL wasn't aware at that point that SWS wasn't a regulated financial adviser and may not have been acting in Mrs H's best interest. Unfortunately we now know that SWS didn't take any action on this matter, despite Mrs H chasing SWS up after speaking with IISL.

Mrs H called IISL again in January 2022. IISL let Mrs H know during this call that it still

hadn't received the necessary paperwork and it ultimately confirmed that the executor of Mr H's estate could provide this and it gave the address where the information could be sent. It was at this point that Mrs H starting dealing with the matter herself and, after the relevant paperwork was provided, the remaining benefits in Mr H's SIPP were transferred over to Mrs H's SIPP.

Overall, while there was a delay in this transfer taking place I've still not seen that this was down to any failings by IISL so I'm not upholding this part of Mrs H's complaint.

## **Conclusion**

Having considered all the available information, I partially uphold this complaint. For the reasons explained above, based on the evidence I've seen, I think it was reasonable for IISL to have accepted Mr H's SIPP application and initial investment instruction into MBH.

However, I think the call handler ought to have questioned Mr H during the call on the 20 April 2020 at 14.38 as to whether it was him that had made the earlier call to IISL. Had the call handler done this, I'm satisfied that Mr H would have explained that it was his financial adviser, SWS, or that he at least believed it was her.

This ought to have started a chain of event which would have ultimately led to IISL recognising that Mr H had shared his account and security details and Mr H discovering that it was not SWS that had called to make the trade. And instead SWS had shared his account security information with another individual. This ought to have been a concern to IISL and it ought to have put a stop to the initial trade, if this would have been possible. Or, if it was not possible to put a stop to it, IISL should have sold any MBH shares that had already been acquired at the earliest possible opportunity. And I'm satisfied that regardless of whether Mr H's IISL SIPP continued or whether it had been transferred to another provider, Mr H would not have continued to invest in MBH.

In terms of the service Mrs H received after trying to notify IISL that her husband had passed away, I've not seen that IISL acted unfairly in this regard. So I'm not upholding this part of the complaint.

## **Putting things right**

My aim in awarding fair compensation is to put Mrs H back into the position she would likely have been in had it not been for IISL's failings.

I take the view that the late Mr H would not have invested further in MBH, if IISL had done what I've found it ought to have done (set out above) and would instead have invested differently. It's not possible to say precisely what he would have done differently. But I'm satisfied that what I've set out below is fair and reasonable.

## **What must IISL do?**

To compensate Mrs H fairly, IISL must:

- First establish if it would have been possible to put a stop to the initial trade in MBH. If this would have been possible, IISL should calculate how much Mr H's SIPP would have been worth at the point it was transferred to Mrs H in April 2022, assuming the MBH trade had not gone ahead and the SIPP funds had been invested elsewhere and performed in line with the benchmark shown below.

If it wouldn't have been possible to put a stop to the initial trade by the point at which

I've said IISL ought to have identified concerns with the trade, IISL should calculate how much Mr H's SIPP would have been worth at the point it was transferred to Mrs H, had the initial MBH shares been sold at the earliest opportunity – following the call on 20 April 2020 – and the SIPP funds had then been invested elsewhere and performed in line with the benchmark shown below.

- Compare the amount established above with the amount actually transferred to Mrs H's SIPP in April 2022. If the amount transferred to Mrs H was less, there is a loss and compensation is payable.

IISL should also add any interest set out below to the compensation payable.

- IISL should pay into Mrs H's pension plan to increase its value by the total amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance, or if the compensation would be subject to tax or any HMRC deductions when Mrs H withdraws it. This is because it is my understanding that Mr H was under 75 when he died. So it's unlikely Mrs H would be required to pay any tax when accessing the inherited funds as these can usually be passed on tax free.
- If IISL is unable to pay the total amount into Mrs H's pension plan, it should pay that amount directly to her. I'm not asking IISL to reduce the total amount of compensation to reflect notional tax because for the reasons explained in the point above, I think it's unlikely Mrs H would be required to pay any tax when accessing the inherited funds.
- Pay to Mrs H £500. IISL's error ultimately led to Mrs H receiving less when her husband's SIPP was transferred to her after he passed away. While what I've set out above will account for any financial loss suffered, there is no doubt that this matter will also have caused Mrs H unnecessary distress at what would already have been a very difficult time for her. So I'm recommending that IISL pays Mrs H £500 in recognition of this.

Income tax may be payable on any interest paid. If IISL deducts income tax from the interest it should tell Mrs H how much has been taken off. IISL should give Mrs H a tax deduction certificate in respect of interest if Mrs H asks for one, so she can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Mr H's SIPP	No longer in force	For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	Date of investment or earliest date the initial MBH shares could have been sold	Date Mr H's SIPP was transferred to Mrs H	8% simple per year on any loss from the date of transfer to the date of settlement

### Why is this remedy suitable?

I've decided on this method of compensation because:

- Mr H believed he was investing in a safe low risk investment. So it seems likely he would only have been prepared to take a small risk with his capital.
- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to his capital.
- The FTSE UK Private Investors Income **Total Return** index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's a fair measure for someone who was prepared to take some risk to get a higher return.
- I consider that Mr H's risk profile was in between, in the sense that he was prepared to take a small level of risk to attain his investment objectives. So, the 50/50 combination is appropriate in this instance. It does not mean that Mr H would have invested 50% of his money in a fixed rate bond and 50% in some kind of index tracker investment. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr H could have obtained from investments suited to his objective.

### My final decision

For the reasons explained, I uphold this complaint and direct Interactive Investor Services Limited to calculate and pay redress as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 17 July 2025.

Lorna Goulding  
**Ombudsman**