

The complaint

Mr B complains that Westerby Trustee Services Limited ('Westerby') failed to carry out sufficient due diligence before accepting the introduction of his Self-Invested Personal Pension ('SIPP') and his application to invest in the high risk and unregulated 'Dolphin' investment, causing him a financial loss.

For simplicity, I refer to Mr B throughout, even where submissions were made by his representative on his behalf.

What happened

The transaction

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

Mr B has said that in 2012, he was at an event where an adviser I'll call 'Mr W of Firm A' spoke about pensions and the advantages of SIPPs. Mr B says he spoke further with Mr W, who advised him to consolidate his existing pensions (just over £310,000 in total) plus some savings into a Westerby SIPP, which he opened in October 2012.

Mr B has said that as part of this and in respect of where he should invest, Firm A introduced him to Firm S Limited, which told him about Dolphin. From emails provided by Mr B, I can see he was in contact with Firm S Limited from at least May 2013 about potentially investing in Dolphin. On 10 September 2013, Mr B invested £40,000 of his Westerby SIPP monies in Dolphin for a five-year term with interest compounded to maturity, as well as going on to make a number of other investments via his Westerby SIPP.

I understand Mr B's 2013 Dolphin loan note was due to mature on 10 September 2018 at just over £76,000. And, in advance of this, Firm S Limited emailed Mr B in July 2018 to say, amongst other things, that if Mr B did nothing then Dolphin would pay this amount into his SIPP. And that if he instead chose to reinvest with Dolphin then he'd need to complete the paperwork at least a month before the maturity date to allow his investment to continue without interruption. Firm S Limited also said that Westerby had stopped accepting Dolphin within its SIPPs earlier in 2018, but that some clients had moved to other providers to continue investing in Dolphin, which generally takes one or two months. And Firm S Limited went on to explain to Mr B that another SIPP provider – which I will call Provider M – allowed Dolphin within its SIPPs.

So, Mr B started the process of switching his Westerby SIPP to Provider M to allow him to invest further in Dolphin.

On 13 September 2018, Mr B signed a Provider M SIPP application form which, amongst other things, said that the transfer would include assets 'in specie' i.e. without cashing them in first. And one of the investments being transferred to Provider M in specie was noted on the form as the "maturing Dolphin £76k".

On 17 September 2018, Mr B signed a new Dolphin 'Loan Note Offer' document and this was also signed by Provider M on or around 24 September 2018. This detailed Mr B's SIPP with Provider M as the pension scheme and that the intended investment amount was £76,323.27 (i.e. the value of Mr B's matured Dolphin loan note investment). However, this £76,323.27 was not repaid to Mr B's Provider M SIPP – instead, by signing this document Provider M agreed to this being re-invested with Dolphin under a new five-year loan note, and the funds continued to be held by Dolphin throughout.

Mr B's SIPP with Provider M was formally opened on 25 September 2019. His Provider M SIPP statements and transaction list record that the Dolphin investment was transferred into his Provider M SIPP on 10 September 2018 though, with a value of £76,323.27, being the reinvested/rolled over amount.

I understand Mr B's Dolphin investment is now valued at nil.

Mr B's complaint

Mr B wrote to Westerby, via his representative, with a letter of claim on or around 3 November 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. And that this has caused him to lose out.

As Westerby was yet to respond, Mr B brought his complaint to our Service on 13 January 2021 and we made Westerby aware that he'd complained to our Service.

Westerby replied to Mr B's letter of claim in early February 2021. It said, amongst other things, that:

- The reinvestment of funds from Mr B's maturing Dolphin loan note in 2018 wasn't permitted by Westerby. It isn't responsible for this. Mr B arranged this directly with Provider M without its knowledge and consent. And Westerby made it clear at the time that it wouldn't take responsibility for this transaction.
- In or around late 2018, it became aware of delays in repayment of Dolphin 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 B would have found another SIPP provider that did. This is supported by Mr B's actions in 2018 in switching to another provider to invest further in Dolphin when Westerby wouldn't permit that anymore.

Mr B has told us in his submissions to our Service, amongst other things, that when the renewal of his Dolphin investment came up, he spoke to Firm A and Firm S Limited about what to do. And that Firm S Limited said that as Westerby had changed its investment criteria he'd need to change to a new SIPP provider to make the reinvestment and Provider M was recommended to him. And it wasn't until around May 2019, that he first learned from a news report that all was not well with the Dolphin investment, as some investors weren't getting their money back.

One of our Investigators reviewed Mr B's complaint and didn't uphold it. They said, in summary, that while Westerby had regulatory obligations they didn't think it was necessary in the circumstances to consider whether or not it had met those. And that this was because they didn't think Mr B had suffered any losses that Westerby was responsible for in respect of the 2013 Dolphin investment, given he realised the investment made via his Westerby SIPP in 2018 for the expected amount.

Mr B didn't agree. His representative said, in summary, that:

- While, on the face of it, Mr B fully realised his Dolphin investment with Westerby upon maturity, this was not as cash. The investment was rolled over into a new loan note via Provider M via paper transaction. And Mr B lost the notional value of his pensions when Westerby accepted the SIPP and initial Dolphin investment.
- The loss occurred because of exposure to the risk, rather than because of the investment itself. The loss suffered by Mr B came about at the point he initially transferred to the SIPP (i.e. he lost his money at that point) because of the inherent risk with the transfer and investment.
- To suggest otherwise would mean that investment scheme administrators, such as Dolphin, could keep rolling investments into alternatives, so that the investment never matures and they never have to pay out, which must be wrong.

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

What I've decided – and why

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

Having done so, I'm not asking Westerby to do anything, for largely the same reasons as our Investigator and as explained 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.

I think the loss being complained of here concerns the Dolphin investment. But, in the particular circumstances of Mr B's case, I don't think that the actions he has complained about – Westerby's actions, that is – have caused the loss being complained about. Instead, for the reasons given below, I think it is what has happened later that has caused the loss. And that Westerby can't fairly be held responsible for this.

As set out above, the £40,000 Dolphin investment that Mr B made via his Westerby SIPP in 2013 was due to mature at just over £76,000 in September 2018. As such, Mr B's investment was worth significantly more (nearly double, in fact) at the point of maturity than the amount he'd initially invested in this via his Westerby SIPP. But Mr B chose to reinvest/roll over that increased amount back into Dolphin in 2018 via another SIPP provider, Provider M, after it had been made clear to him in emails with Firm S Limited in July 2018 (as summarised in 'What happened' above) that Westerby would no longer permit the Dolphin investment within its SIPPs.

The 2018 Dolphin loan note offer document also supports that the reinvestment of the 2013 loan note wasn't instructed by Westerby, given that Provider M is named on this as the pension scheme and that Provider M later went on to sign this document. And Westerby has said that this reinvestment/roll over was made with another SIPP provider, without Westerby's knowledge and consent as existing scheme trustee. So I don't think Westerby is responsible for Mr B's 2018 Dolphin reinvestment.

I'm 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 B could have gotten his investment monies back at the maturity value of just over £76,000 if the Dolphin loan note he'd taken out via his Westerby SIPP had been allowed to mature with it in September 2018, rather than being reinvested/rolled over into a new Dolphin investment via another provider in the way it was.

So, in my view, Mr B's monies have been lost as these were reinvested into Dolphin via another provider, and I can't fairly hold Westerby responsible for that.

In summary, for the above reasons I think that, in the particular circumstances of Mr B's case, even if Westerby did not carry out adequate due diligence (and I make no finding on that point), it is not fair and reasonable to require Westerby to pay compensation to Mr B as I don't think the financial loss being complained of here is one that it can fairly be held responsible for.

This means that, while I recognise Mr B's strength of feeling on the matter and I understand this will be disappointing for him, I'm not asking Westerby to do anything.

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 B to accept or reject my decision before 5 August 2025.

Holly Jackson
Ombudsman