complaint

Mr B complained about the transfer of his existing personal pension to a newly opened self invested personal pension (SIPP).He says this was to done to enable a particular unregulated investment to follow and he says all of these things were unsuitable for him.

It's said Mr B has suffered a loss and St Martin's Partners LLP (SMP) are responsible.

background

Mr B told us he was contacted in 2012 by someone he understood to be an adviser at a company known as Alternative Asset Finance (aaf). Mr B believed this person had been previously employed by the business where his pension funds were held.

Mr B says this adviser persuaded him to transfer his pension fund into a SIPP with Guardian. Mr B understood this was done to enable an investment in the Rimondi Grand to follow, using the funds held in the SIPP. The Rimondi Grand investment was an unregulated overseas property investment.

Mr B came to this service as SMP rejected his complaint. Mr B told us he was concerned about the loss of value to his pension funds and the substantial increase in charges being applied by the SIPP provider. He thought the time was up on his investment and so he ought to be getting his money back. He went on to explain to us some of his doubt and confusion about what had happened.

We have been provided with various documents relating to the transfer and the starting of the SIPP in 2012 and the later investment (2013). It's said none of these actions were suitable for Mr B; and that he wasn't in a position to have done them and wouldn't have done them independently or if he'd appreciated the risks and potential consequences.

In summary on behalf of SMP, it's said the main substance of what was done, took place before 28 August 2012. SMP say it wasn't until that date they took on "*alternative asset finance*" [aaf] as a trading style.

Prior to 28 August 2012 aaf was used as the trading style of a regulated financial advice firm called Finance in Medicine Ltd (FIM). SMP say Mr B should look to this firm (who are no longer trading) or the SIPP provider, to meet any liability for Mr B's loss. SMP don't necessarily agree any business did anything wrong. Albeit they now say that if there was any breach, this breach took place when FIM were dealing with Mr B and again they are not liable. SMP say they aren't responsible primarily because the main actions relating to Mr B were done by the predecessor business.

SMP accept they did technically receive a commission fee following the transfer of funds and the opening of the SIPP money. But more recently they told us, most of this money wasn't technically paid to SMP or any of their employees. It's said the people behind aaf took the larger proportion of all commission and went on to pay a proportion (12.5%) to SMP. So indirectly it's said that a distinction needs to be recognised between aaf and SMP. Albeit it is accepted that aaf was a trading name of SMP at the time the commission was paid.

SMP on at least one occasion seemed to say that one of the people who used to run FIM continued to work under the name of aaf, after it was taken over/ used by SMP. But SMP don't appear to entirely accept this person worked for or was associated with SMP.

In any event SMP have also said that Mr B was a client who was dealt with by all the regulated firms on an execution only basis. So they have said in some submissions, Mr B knew what he was doing and instructed people to act on his choices. It's said the documents signed by Mr B were clear it was an execution only arrangement and no advice about the plan, suitability or any investments was being provided; nor would be.

Mr B says that at the time his funds of £32,704.97 were transferred (10 September 2012), he was aged 46. He was a homeowner (and had been for four years) with an outstanding mortgage. He was self-employed and unmarried at the time (married two years later), with no dependents. These were his sole private pension arrangements; although he was due to receive an occupational pension scheme income from the age of 51 representing nine years of service. The limit of his investment experience was an ISA where he held just over £12,000.

An adjudicator at this service looked into the complaint and upheld it. She pointed to what took place before and after late August 2012 and her view. She set out what she thought SMP should be required to do.

SMP didn't agree, they provided some material and made further submissions. The initial adjudicator left this service and a further adjudicator reviewed the case. He explained to all parties that he was of the same view as the first adjudicator and why.

In summary he thought the case had been set up against the right business. And he pointed to the SIPP application. He said that although the application was dated 1 August 2012 it hadn't been sent to/ received by the SIPP provider until 30 August 2012. The cover sheet attached to the SIPP application was marked from aaf and also set out that aaf was a trading style of SMP (and not FIM). So the adjudicator thought this was sufficient and demonstrated SMP's involvement in the activity sufficiently. He also pointed to the invoice issued by SMP using the trading style of aaf to the SIPP provider for payment of adviser's commission in October 2012.

The adjudicator concluded that Mr B only completed the transfer, opened the SIPP and later made the investment under the influence and following advice from another. It couldn't be said that Mr B would have known whether the person he dealt with was regulated or not. The adjudicator wasn't satisfied by the purported execution only documents and he didn't think enough had been done to ensure these were appropriately applied and used. And he didn't think Mr B could be described as someone with sufficient knowledge who was directing a business to complete a specific transaction.

SMP didn't and don't agree. Initially their compliance officer in 2017 said in summary:

- The adviser who spoke with Mr B may well have been working for aaf at the time, but not when aaf were associated with SMP, as they had never heard of him prior to the adjudicator's email.

- The only person involved with aaf according to SMP at one stage in their submissions, was the person they identified and [at this point] SMP said that everything had been carried out when aaf were appointed representatives of FIM.

They said SMP had never and would never recommend any "*non-regulated investments*".

It's right to say that SMP's submissions on this have varied over time to some extent. There has also been reference to a number of people working for aaf and that they took files with them when they left SMP. Historic information has also been relied on emanating from another named aaf individual.

- SMP said they found it difficult to understand how the adjudicator concluded Mr B wasn't able to understand the papers he signed, as they said "*they were as clear as possible*".

On 31 August 2017 SMP contacted us again and provided further submissions and material. In early 2018 SMP instructed representatives, who went on to contact us in February 2018 with a number of further submissions and various attachments. Thereafter SMP and their representatives provided a stream of submissions, some requests and some further material over an extended period of time. Overall SMP doesn't agree they did anything wrong or that they should be liable for any loss.

Provisional decision

I issued a provisional decision on this complaint on 23 April 2019. In this I indicated I intended to uphold Mr B's complaint, I set out further detail on information and material provided to this service and my initial thinking. I also said what I thought SMP ought to be required to do. In my provisional decision I set out my understanding, in summary, of SMP's position:

- SMP aren't responsible or liable for any failings attaching themselves to the setting up of the SIPP.

- In any event they had no knowledge about what happened and didn't finally receive the commission paid for the activity. Or what they did receive was only a small proportion and reflected the use of work being done in one of their regulated adviser's names.

  As set out in my provisional decision, it appeared to be indirectly accepted that SMP's regulated adviser's name was used (for example for the submission of documents such as SIPP applications) and that a small proportion of commission was paid to SMP to represent this. But (again indirectly) it appeared to be suggested this was done without the regulated advisers knowledge or direct involvement. Nothing further was received on this point on behalf of SMP following my provisional thinking.

- SMP submit that this service has a usual approach of affording a new adviser three months to review and get to know a new client; so they couldn't be expected reasonably to know about Mr B's position at the time the SIPP was opened and transfer completed.

  In any event all the substantive work done to set up the SIPP was done before they came to exist/ be involved or take on the trading style of aaf.

- Mr B's SIPP was set up on an execution only basis.

And this was the same with all the work they were undertaking at this time that had been acquired from/ moved with aaf.

I have previously noted that despite requests from this service, we have never been informed of the arrangements and agreements by which SMP came to take over/use aaf as a trading style with their work; nor any agreement about the division of commission relating to ongoing work. Albeit representations relating to the provisional decision say that there was no retainer or agreement with Mr B for SMP to revisit previous decisions or the acts or omissions of a previous firm of advisers (FIM).

- Mr B (as a client using the execution only service), had approached aaf/ FIM and instructed them on what he wanted and made his own choices.

- SMP didn't advise Mr B on any investment and had no knowledge of this. And it was clear that any investment was a matter for Mr B.

- FIM and/ or the SIPP provider should be liable or pursued in respect of this matter.

It had appeared to me that at various times it may have been suggested this service wasn't able to look at a complaint made by Mr B against SMP, as a case shouldn't be set up against them. In my provisional decision I explained why I didn't agree.

In my provisional decision I highlighted the following documents and information in particular that had been provided to this service:

- Typed letter dated 20 July 2012 addressed to Alternative Asset Finance (apparently at the address associated with FIM) purportedly from Mr B setting out and confirming that he wanted them to set up a SIPP for him and obtain pension transfer papers and this was on an *"execution only basis"* and that once this was completed their role *"will cease".* It says it also confirms that investing remained his responsibility once the funds are in the *"wrapper".*

  In my decision I commented that this letter has a marked resemblance to the other letters also purportedly provided by other clients in similar situations to aaf around the same time. And in my opinion also resembled correspondence sent from aaf to clients. I also commented on the language used. Overall I thought these were pro forma letters drafted and used by the regulated firm for clients. I didn't think it emanated from Mr B personally. Nor did I accept he would have sufficiently appreciated what the content was said to confirm and intend.

- A purported execution only client agreement issued under the name "*Alternative Asset Finance a trading style of Finance In Medicine*". This document is said to have been signed by Mr B with a date provided on the document of 26 July 2012. The space to have been signed by AAF is blank.

- A letter dated 26 July 2012 from aaf to Mr B said to enclose the papers required to set up the SIPP. The letter refers to having completed paperwork for Mr B and also refers to aaf being a trading style of FIM.

I previously concluded this letter looked like the letters sent to others along the same lines around the same time.

- SMP also sent us a page where it's indicated how Mr B intends to pay the related charges and this has a tick box selection and has been signed by Mr B and dated as being issued 26 July 2012.

  The page suggested Mr B had selected to pay a fee over a commission payment. According to the explanatory note only a commission payment would be paid directly from the transferred funds by the SIPP provider.

  I noted this was inconsistent with the spreadsheet and statement from the SIPP provider where monies were paid directly to aaf/SMP. But nothing more has been provided on this.

- A one page execution only statement issued under the name *"Alternative Asset Finance - new wealth strategies".* This purports to be an agreement from an elective execution only client and contains typed declarations of the rights it's said the signee understands. There is a date of January 2012 relating to the purported draft of this version date. The document is signed by Mr B and dated 1 August 2012.

  It was said for SMP this document was accompanied by a document entitled "*Points to Remember*" and we were provided with copies of this. This set out the documentation it's said Mr B was provided with. These gave explanations on SIPPs and the points said to demonstrate Mr B understood what he was doing.

  I noted this document also had details suggesting it is a generic version from January 2012 and designed to accompany a particular agreement. This refers to aaf being a trading style of FIM (as the regulated business).

- SIPP application form completed partly in type and partly by hand. Mr B's details are entered as being a sole trader earning around £30,000 a year.

  The "*authorised adviser*" is named as the person who was SMP's regulated adviser and provides the regulated firm details as provided as "*Alternative Asset Finance a trading style of St Martins Partners LLP*".

  An address associated with aaf follows with a phone number and email address and the FCA number as 537904 (SMP's number).

  All the details appear to have been electronically completed save for the regulated firm name and address.

  The document is signed 1 August 2012. There is reference to it being *"non-advised'.* There is further reference to the document having been received on 30 August 2012. And the independent financial adviser's details are recorded as Alternative Asset Finance.

- An invoice from aaf to the SIPP provider dated 18 October 2012 apparently referring Mr B's name and a case number of 355 in respect of their fees of £981.

The title of the firm is printed as "*Alternative Asset Finance Is a trading style of St Martins Partners LLP*' with the ref number provided as 4002376. This number is the Companies House registration number for FIM.

- Confirmation of identity documentation sent to the SIPP provider including the confirmation of the introduction by a regulated firm is signed and dated 1 November 2012. The details of the regulated introducing firm are given as St Martins Partners with the number 537904. The FCA number for SMP.

- Also provided was a purported customer verification document dated 1 June 2012. This gives the regulated firm details as Finance in Medicine Ltd.

- A 35 page purchase pack for the Rimondi Grand investment. The developer's agent is documented as being "*Alternative Asset Alliance*".

  Mr B appears to have signed this agreement on 18 April 2013.

- The transaction history of Mr B's SIPP. It was opened with a zero balance on 4 September 2012. A transfer of £32,704.97 was received on 19 October 2012. And on 25 October 2012 an adviser's fee was paid to "*Alternative Asset Finance*" of £981. On 24 April 2013 the Rimondi investment was made of £29,178.

Mr B

In general terms Mr B accepted my provisional decision. I've seen he has felt frustrated at times about the progress of his complaint. I also understand that he thinks my award to represent the distress and inconvenience he has suffered is too low.

The SIPP provider sent us a copy of Mr B's purported undated request letter to remove aaf as the "*facilitator*" for his SIPP; [Albeit they were referred to on other documents as SMP trading as aaf as the advisers]. This letter goes on to set out that correspondence ought to be sent hereon to Mr B. This document is dated stamped as having been received by the SIPP provider on 27 February 2013.

SMP

SMP's representatives didn't accept the provisional decision. We were told it there was "*little to be gained in dealing with every point*" but they didn't accept the relevance of all the contents of my provisional decision. It was felt this service had been determined from the start to regard SMP as non-compliant as opposed to focussing on another business for liability. Two points were stressed:

- FIM were responsible for the relevant advice (or failure to give advice).

- The relevant execution only business was compliant and applied the regulatory expectations at the time.

Whilst documentation had been submitted under the auspices of SMP; this didn't give rise to liability and they didn't think the chronology supported what I'd said. It was said Mr B had made decisions in relation to the transfer and opening of a SIPP with aaf under the auspices of FIM. The breach or negligence had already happened when the decisions were taken

(with or without advice). And responsibility for this remained with FIM as they were responsible for aaf at the relevant time.

It's said that I ought not to uphold this complaint because to do so would be in contravention of the law. It's suggested the consequence of my decision is to decide that aaf (under the auspices of SMP) were in breach/ negligent by failing to rectify an original breach and reversing a decision to transfer and enter into a SIPP.

So it's said that at most, a failure here wasn't a new breach. And any failure of a professional to advise on its own breach, doesn't amount to a further breach. SMP conclude that this leaves only a single breach, (that of the original aaf/FIM breach) that it's said formed the basis for the decision being made to transfer. They say "*it's the decision to agree with Mr B to set up the SIPP to accommodate the transfer that is the negligent act or omission. There is not a further breach by aaf/SMP and ..no basis on which to attach liability to SMP*".

Further or alternatively, it's also said, that at no point did SMP enter into any form of retainer or agreement with Mr B including the revisiting of previous decisions and / or the acts, errors or omissions of a previous advisers (FIM). And there was no duty on SMP to review a decision previously taken. In addition it's said that the approach to execution only has been informed by using hindsight.

my findings

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 haven't changed from the thinking I set out in my provisional decision.

Overall SMP didn't do everything they ought reasonably to have been expected to have done. And in my view, were it not for their acts and omissions, I don't think Mr B would have been in the position of having a SIPP or transferring his personal pension plans from their original providers into this SIPP; nor would he have gone on to make the highly risky, unregulated overseas investment.

I have read and considered everything that has been provided with real care. But I hope it will be understood that it's not practical to set everything out in my decision.

This service is an alternative to the court process. It's intended to be informal and is intended to be accessible to all, including those who are not legally or financially qualified for example.

A number of submissions have been made to this service by SMP and their representatives, which I think can be characterized as bulk submissions; appearing to relate to complaints made by different individuals. There are some shared characteristics between some of these complaints but as I've previously highlighted, I consider each case on its own merits. So I have highlighted the need for care to be taken to ensure it was clear enough when submissions were intended to be applied to a particular complaint. I don't think this has always been the case here. However I have considered everything that has been provided and applied it where it has reasonably appeared to be so intended.

In taking into account everything that has been said and provided to this service I have seen that a number of my queries and requests for further information went unanswered. I have only drawn inferences from this where it has appeared reasonable for me to so do.

I have seen a letter from the Financial Services Compensation Scheme (FSCS) in respect of a claim made to that service about FIM, which has some similarity to Mr B's complaint made about SMP. This letter sets out an FSCS' finding that they couldn't consider the claim, as it should properly be made to SMP. This is a letter I understand has previously been seen by SMP. I accept this letter was not provided in respect of Mr B's case; nor was it a finding made in respect of Mr B's case, and so it has had limited impact on my thinking here.

In any event, I would like to remind parties, I am not drawing any conclusions about any liability that may or may not properly attach to FIM or the people involved in FIM or any other firm or individual or provider. And there is nothing to follow as a consequence of my decision about Mr B's complaint about SMP that should prevent SMP pursuing anyone they may wish to.

I think Mr B's complaint has properly been set up against SMP. I accept Mr B was a consumer and client of SMP's, during the relevant time, and certainly from 28 August 2012. It doesn't appear to me, having looked at what was said following my provisional decision that SMP disagree with this.

I think Mr B is properly categorized as having been a client receiving the services of SMP on matters pertaining to the setting up of his SIPP and the transfer of pension funds. I think these activities were done for the purpose of enabling the investment that followed. I accept there was a form of a model or process being adopted and this was applied to Mr B. Based on what I think I tend to think SMP were aware of this. Mr B was reasonably entitled to expect and receive a level of service and care that I think, based on what I've seen fell short.

I've looked at what was done by SMP and under the auspices of SMP. I have concluded that there was a model of work being used here, of which SMP played an integral role. Mr B was a client of SMP's and the work done for him was done in furtherance of this model of work. I understand SMP haven't addressed some of the points previously made about the regulatory duties owed to Mr B (or others). But I think they were required to act in his best interests and they failed to do this. I think it was or would have been sufficiently clear that there were areas that ought to have attracted real concern. Due to the nature of the model and what I think was known here, I don't accept that it's reasonable or fair to conclude SMP ought not to be responsible for things done for their client within such a short space of time after Mr B became their client and what followed thereafter.

I've also seen it suggested the SIPP form was signed prior to aaf becoming a trading style of SMP; yet the regulated firm details captured on the form were those of SMP. This form was received by the provider at the end of August, funds were transferred after this. SMP appear to have remained as Mr B's adviser for some months thereafter.

I don't accept it's accurate to characterize SMP's role as being an unwilling or unknowing party to an earlier breach; or that their only role was to fail to review earlier activity in relation to Mr B.

I've seen that SMP's submissions against the liability of a subsequent adviser for any failings of a previous adviser; have included their view that a subsequent adviser isn't required to review (or not immediately) previous advice. SMP expanded on this on more than one occasion. They told us that this service often concludes three months is a reasonable time for a new adviser to review a new client. And have also gone on to add this wasn't the case *unless* anything had been agreed under a retainer. It was said on behalf of SMP, this hadn't been the case here.

I have gone on to look at what's said further below. But in respect of any retainer, or anything agreed, I think it could be a reasonable understanding of the thrust of some of SMP's submissions to now be to suggest SMP had considered the issue of liability for ongoing clients or previous advice when taking over/ taking on aaf and their work and clients. I think this would have been the usual and expected (and prudent) approach. But despite repeated requests from this service, we have never been informed of the arrangements and agreements by which SMP came to take over/use aaf as a trading style and their work.

I would consider it to be unlikely that a regulated firm could consider they were properly fulfilling their duties when taking over or taking on a business, business model and client book if they didn't review the nature of the work, clients and reach an agreement on any ongoing liability.

I think SMP played a sufficient role in the activities that led to a SIPP being started in Mr B's name and his funds being transferred into it, and without their assistance this wouldn't have happened. I accept the reason the SIPP was opened was with a view to enabling Mr B's funds to be transferred in to go on to make the investment that later followed. I don't accept Mr B was in a position to conduct or direct these steps on an execution only basis, and I don't think that's what happened here. I don't accept the hallmarks of what I'd expect to see, for true execution only work, are present here.

There is nothing provided to support the assertion Mr B approached the predecessor business. And this doesn't seem to have been substantively pursued. It is inconsistent with the alternative assertion that Mr B may have been approached by an ex-adviser of his original pension scheme, who might have worked for aaf previously.

I prefer what's said by Mr B on this. I also don't accept Mr B is someone I think would be in a position to have sought out an adviser with the independent intention of completing these transactions.

I don't think this was a suitable change of position for Mr B's pension arrangements, based on what I've seen. And I don't believe that if SMP had done all I think they were required to do, Mr B would be in the position he finds himself in. Indeed if SMP had acted as I think they should have done, I don't think Mr B would have gone ahead with the application or transfer, let alone the investment.

In reaching my current thinking I have taken into account everything that has been said and provided to this service. I have also seen that a number of my queries and requests for further information have gone unanswered. I also think there have been a number of inconsistencies in things said and provided. I have only drawn inferences from this where it has appeared reasonable for me to so do.

For example I've already noted my enquiries made and agreements reached on clients, business and liability, prior to SMP taking on the trading style of aaf have gone unanswered. I consider information on this might be of relevance to Mr B's situation given the timing of when things were done and should reasonably be provided given the nature of the submissions made by SMP and on their behalf.

I have seen that in March 2019 we were told on behalf of SMP that "*it appears that aaf "jumped the gun" in terms of sending existing documentation (produced under the FIM banner]*" a few days before aaf came under SMP's name.

We were also told at the same time one of the directors of SMP "*sought information from AAF as to the business it was undertaking, but it was only on 17 September 2012 (3 weeks after joining) that a list of business for which AAF had used SMP authorisations was provided*… [and] *So SMP was not even being provided with information about this case until the matter was completed and paid".* And an email was sent to us (in fact apparently dated 19 September 2012 said to show this).

I don't consider this an adequate or satisfactory explanation of SMP's approach or understanding. I can't accept that a director of a regulated firm thought it satisfactory to seek information about what they were taking regulatory responsibility for in such an apparently casual manner.

I don't accept what was also said about this at the same time on SMP's behalf:

"*At this point, all such business had been submitted to the SIPP operator, so SMP could not have done anything about the business even if it had the opportunity to review every case*".

Nor do I accept that:

"Often the only "connection" with SMP has been AAF issuing an invoice well after the event to the SIPP operator, after the AAF team had joined SMP".

I don't think this reflects the true position.

There is nothing I have seen that suggests to me SMP contacted Mr B (or any other aaf client) to introduce themselves or let them know they were the regulated firm dealing with the client's affairs. I am left overall with the impression that SMP's relationship with Mr B was kept very much at a distance. I can't see anything that suggests to me Mr B would have necessarily known or understood who was acting. This, in my view, also tends to weaken submissions that Mr B was acting in his own capacity and directing choices as an execution only client.

I understand SMP suggest this service has recommended advisers should be entitled to have three months to acquaint themselves with a new client and his or her own circumstances. And I have also seen an email purported to be from the Financial Services Authority (FSA), the regulator as was at the time, to one of the aaf directors. This email, hereafter referred to as the 'FSA email', appears to me to be the sole direct evidence provided by and on behalf of SMP in relation to the nature of the business taken over when taking on the trading name/ style of aaf. I think it's important to stress this email was provided in support of SMP's position.

There may be circumstances where three months may be a reasonable period of time for a new adviser to acquaint themselves with a new client and their needs and circumstances. Each case turns on its own facts.

But I don't think it is a reasonable here to suggest SMP required three months (from 28 August 2012) to be in a position to review Mr B's position as their client. Here was a client in the process of making significant changes to his arrangements, for which they held

responsibility (which I think should have led them to act and delay and review the SIPP application and transfer).

SMP haven't, in any event, suggested they intended to advise Mr B at any time. I appreciate they say Mr B was dealt with as an execution only client, so this might be considered to be inconsistent with the suggestion of time being needed for a full review. Equally of course there's an absence of an introduction as the new firm to a new client. So there's no suggestion they let their new client know what would follow, in what time period and what services they offered, for example. I haven't seen it said here that SMP did go on to deliver a review. I've seen the copy of Mr B's purported undated request letter to the SIPP provider to remove aaf for his SIPP. This document is date stamped as having been received by the SIPP provider on 27 February 2013. Based on what I've seen I tend to think this wasn't sent to the provider by Mr B. This letter appears to follow the generic format drafted for and used on behalf of other clients in the same way.

In relation to the FSA email, it isn't clear to me when this email was first provided to SMP or their representatives; but I find it very difficult to reasonably conclude this would have been the only information requested by, or provided to, any business taking on a financial advice business or portfolio of ongoing work and clients. And if this were an accurate summation of what happened, I can't conclude this was reasonable as a business practice; or that it would meet requirements or any duty of care.

In any event, I have read a number of repeated submissions from SMP and their representatives about what I ought to infer from the FSA email. But I don't agree the inference(s) I am asked to draw are reasonable or fair.

The FSA email is provided by SMP in respect of Mr B's case [as well as in relation to a number of other complaints]. It is a photocopy of an email header from a man with an apparent Financial Services Authority (FSA) email address addressed to and copying in names seemingly related to aaf. The email is dated 1 March 2012.

We were told that when the aaf people left SMP in 2013 they took records and/ or documentation with them. However we haven't received anything further of substance on this issue since we asked about this and why this had been allowed. I can't conclude that SMP acted properly in allowing this or knowing this had happened. There is an inconsistency in this with an email from 2016 provided by SMP to this service which suggests that a person linked to aaf told SMP all files were on SMP's systems electronically from 2012. I've also seen what we've been supplied with.

The FSA email provided is an apparent continuation of an ongoing correspondence. The main body of the email text said to be from the FSA and relied on in submissions for SMP in summary, thanks the named person for the response and says they now intend to close the matter. It goes on to say they intend to:

"*allow the firm to put in place the new procedures etc. we have discussed and agreed. As I have previously mentioned given the business model and the concerns we had, we may choose to review the firms progress in this matter in the future and you should ensure that all documentation to support the changes made is retained for this purpose.*

I would again take this opportunity to remind you that given the execution only business model and the relationship with AAA you need to be comfortable that there is no regulatory risk to your firm. We have discussed how you can do this and the ongoing due diligence, and

I am pleased to note your comments that you will involve [an independent compliance firm] *in reviews to provide further external challenge. My one final comment on the process is to consider the risk that the client may contravene current pensions regulations or HMRC rules as a result of the transaction and how you ensure the client is aware of this risk*".

It's said this email shows the FSA were aware of the work being undertaken and business model of aaf and had approved it. And so, by inference, SMP should have had no concern and/ or indeed the regulator approved the work and approach. I don't agree for a number of reasons.

Primarily I don't think it's a reasonable inference to say the regulator approved of the business model and what was being done. I do not have any information on what the regulator had been provided with, or what the FIM/aaf model was. Nor do I think the body of the email is approving of whatever has been discussed, I think at most, new (unidentified) procedures to approach a proposed business model had been agreed and were to be put in place.

I accept there is reference to there being an execution only model, but the writer of the email specifically highlights the potential for a regulatory risk, in addition to other risks. Nothing has been supplied in relation to any external or compliance based reviews. Given there's also a reminder to retain documents this highlights the importance (and my concern) about SMP's record keeping on their work here. It's not known if it is being suggested this email sums up what SMP knew at the time they did the work and/ or if they saw this email in 2012. We've asked but not been told, although one reading may suggest this is what's being said. This would suggest to me SMP don't appear to have followed or been able to evidence what was required. In any event I can't see that SMP have reasonably acted or kept the necessary records based on what has been said and provided to us.

In addition I find it unreasonable to be asked to conclude (which I think is what I am being asked to do) that the regulator would have considered that it would be competent, reasonable or appropriate for a firm to avoid responsibility and/ or fail to comply with requirements, simply because errors took place before a client moved to another regulated firm. In addition I have seen nothing to suggest to me there was any ongoing due diligence even if I were able to conclude other aspects had been complied with, which I can't

Also, and as I've previously considered and wondered if it had been overlooked when submissions were made to this service, I've seen the FSA email refers to "*AAA*" and not aaf.

Based on what I've seen. I think it's reasonable to infer AAA were, Alternative Asset Alliance, the Developer's agents for the unregulated overseas investment that Mr B went on to invest in. Here the Rimondi Grand.

My conclusions on this are supported by the email provided to us dated 8 December 2016. This email is headed as having been sent by one of the names associated with aaf and is addressed to the Directors of SMP (one of whom was also their compliance officer). The other main name associated with aaf is also copied in. The email subject is said to be "*aaf*". The writer of the email set out:

"*AAF were originally approached by Alternative Asset Alliance, who had been known to us for a number of years, to provide an administrative service to their agents, who wished to provide their clients with access to various alternative unregulated investments for their pension funds.*

This could only be achieved if an (unregulated) SIPP was set up on their behalf and this was the only service that they required. This is because prior to January 2013, SIPP plans were then unregulated, and therefore it was possible for an individual to make their decisions for their own SIPP funds, following their own research or discussions with agent(s) representing available investments.

Because in order to achieve the investment of their choice they had to have their pension funds within a SIPP, at this time AAF agreed to provide an administrative facility such that anyone wished to transfer their pension funds into a SIPP for the purpose of such investment, they could achieve this. We were however, always totally transparent that we would only provide this if we were explicitly requested to do this on an execution only basis, such that no advice was requested and no advice was provided by AAF at any point".

The email sets out what the writer says was the regulator's meaning of execution only. And says that as would be expected by the regulator they never met any of the clients and were only contacted via their agent. The email also says that *"due to our cautiousness"* in respect of those who might seek redress apparently in relation to performance disappointment, they *"ensured that anyone wishing to use this service provided us with written documentation confirming that they understood the term execution only, they agreed with Its terms, and they wished to proceed on this basis".*

I don't accept that Mr B did provide sufficient written documentation to meet what was required to demonstrate true execution work. I think Mr B was one of a number of clients who signed pro forma, pre-drafted documents and statements. These contained technical details and terminology that I don't think Mr B could be expected to appreciate and comprehend (and I don't think he did here).

At one stage SMP told us that clients were never seen directly, so I find it impossible to accept they can properly conclude Mr B was an execution only client. I accept there's nothing to suggest that SMP's regulated adviser (whose name was used on documentation) or indeed anyone from SMP met with Mr B directly. So this makes it even less likely that it is sustainable for it to be suggested they could properly be satisfied Mr B understood and appreciated what he received and what he signed.

The 2016 email suggests they'd also taken "*the precaution*" of obtaining the written opinion of the regulator approving their systems and paperwork. It might be inferred this is a reference to the FSA email, as both provided to us by SMP at the same time in August 2017 email (the FSA email has been re-sent and referred to on numerous occasions since).

SMP's compliance officer repeated the submission the FSA supported SMP's position. He told us in 2018 the FSA e-mail followed the FSA's review of aaf in 2012 prior to joining SMP and again stated "*it is clear that the then Regulator believed we were in compliance with COBS Rule 10.4.1 R 01.11.2007, otherwise AAF would have had their process re-engineered or discontinued*".

It's right to say there has been some inconsistency within the submissions made to this service about how SMP and their representatives think the regulator's Conduct of Business Rules (COBs) apply, if at all. The same is true for a number of other regulations and directives. In addition I am aware that SMP have more generally been directed to the regulator's Principles for Business together with information and the guidance in relation to execution only business available in 2012.

When SMP contacted us with a copy of the email in August 2017 they sent in a number of submissions and also attached a copy of a 12 page document entitled "aaf Execution only SIPP facility. I understood the correspondence to infer this document had been provided to the regulator or approved by them.

It's my understanding this document, taken in conjunction with the FSA email, has been provided to support the submission of what aaf and also SMP knew and agreed from the start. This includes that the service provided was in respect of assisting someone to make an investment by setting up the transfer and SIPP needed. I agree aaf knew this (I don't agree on the inferences that are said to follow); and I think there is enough to also conclude SMP knew this.

I think this 12 page document is inconsistent with other submissions. It sets out that aaf is a trading style of SMP. So if this was the document submitted to and purportedly approved by the regulator (prior to their email of March 2012), aaf was using the name SMP before late August 2012. There is a further inconsistency as the notes at the bottom of the 12 page document set out this is a generic document entitled "Pensions Technical 6 April 2012". So this also tends to suggest SMP might have already linked with aaf in April 2012. I appreciate there are a number of potential explanations, but equally these haven't been made to me.

I understand there has been some suggestion SMP didn't have any real understanding of what aaf, also known as SMP, were doing until sometime later; 2016 was one date suggested.

I don't think that's a satisfactory or sufficient explanation. I think it's reasonable for SMP to have had an understanding of aaf's work, any business models and their client book and ongoing work, as a matter of basic due diligence when taking over regulatory responsibility and benefitting from aaf. I can't accept SMP would have reasonably started using aaf as a trading style without any knowledge or without there being a potential benefit for SMP.

I've seen no representations have been provided on the assertion in this email that client files and information were uploaded to SMP's systems at the time. This assertion is inconsistent with the assertion relating to aaf personnel removing case files when they left SMP.

I've seen the payment of commission has been highlighted to SMP as an example of their involvement. Reference has also been made to the name of SMP's regulated adviser being used on paperwork for Mr B [and others] as part of the transfer and SIPP application process. This service was quite recently (March 2019) provided with a spreadsheet and an email said to have come from one of the names associated with aaf.

This email appears to have been sent by this person using an aaf email address to one of the directors at SMP (also the regulated adviser] on 19 September 2012. It reads:

"I attach a spreadsheet of all cases that have been submitted under your FSA number- these will not be paid though for a couple of months as it takes time to filter through - Is this what you are looking for? Once the cases have been paid and completed - we will forward to you electronic file for your records".

At the same time were provided with a spreadsheet, said to have been attached to this email. The spreadsheet contains details under the headers; case numbers, client names,

SIPP provider, full commission, SMP commission @ 12.5% and date documents sent to SIPP provider.

In relation to Mr B, the spreadsheet gives a case reference of "355" and the sum entered in the list of full commission was £926 and in the SMP commission list is set out as £115. The date of 24 August 2012 is entered for the date documents sent to the SIPP provider.

Having looked at the transaction history from the SIPP provider this spreadsheet is inconsistent with the "IFA" fee they show on the SIPP statement paid to aaf of £981.

We have not been told by or on behalf of SMP why this information wasn't provided to this service at an earlier date. Nor have we been told anything further about the context of this; for example why SMP had been looking for this information at the time.

As I've set out above, I don't accept that SMP knew nothing about the work they had responsibility for and that the use of their details enabled to take place. I find it unreasonable for the suggestion that a distinction can properly be made here between aaf and SMP at the time when SMP was using the aaf name; I also find the suggestion pro-offered that aaf had jumped the gun and started using SMP's regulated details early as unsatisfactory at best.

Having reflected on this information I accept that individuals who became involved with SMP via aaf may have financially benefitted from Mr B's transfer and the opening of the SIPP; but this is in addition to SMP. And it is clear enough to me that it was the use of SMP as a regulated advisory firm that enabled this business and Mr B's transfer and investment to proceed.

I don't accept SMP would have taken on aaf as a trading style, for it to run as a stand-alone business, but for SMP to provide all regulatory responsibility, without there being a benefit for SMP.

I also think there is sufficient to enable me to reasonably conclude that SMP not only should have known the nature of the business and what was happening with Mr B as a client and amongst a number of client; but they should have taken steps to review the suitability and regulatory compliance of such activities. And here I think there is sufficient to conclude they had at the very least sufficient knowledge and understanding of what was going on under the auspices of their business.

I think SMP were aware of the nature of the business being conducted and played a sufficiently significant role in enabling Mr B's transfer to go ahead and SIPP to be opened. And of course this paved the way for the investment that followed.

In reaching my current thinking I have seen that although not in line with all other submissions received, SMP did inform this service that:

"At the point when [aaf associated name] *and her team came to work under the SMP umbrella (continuing to use their existing style, AAF), their business model was well developed. SMP sought and received assurances from* [the named party] *that no business was procured from third party Introducers (however remunerated).* [She] *presented herself as a specialist in lower cost execution-only business and stated that Investors would find her (It Is assumed through some general marketing and word of mouth).*

A significant number of the complainants were already known to AAF when the AAF team joined SMP, so no new "Introductions" were made. To the best of SMP's knowledge and understanding, subsequent complainants were referred to AAF (and therefore SMP) by existing clients and general word of mouth. SMP had (and has) no knowledge of any Introducer arrangements being In place to generate any leads or new business.. As a general point when the AAF team left SMP In 2013, they took much client documentation with them, so SMP has limited details about the initial contact between each individual client and AAF. SMP has sought further Input.. but this has not been forthcoming and therefore the best particulars SMP can give are as above".

I don't consider these steps sufficient or persuasive. And these submissions are, again, inconsistent with other submissions made. Taking everything I have seen thus far into account, as I've set out, I think SMP did assist and play a role, sufficient to lead me to conclude Mr B's complaint against them should be upheld.

In reaching my current thinking, I'd like to also highlight some specific information provided to this service of which I have considered of some particular relevance:

I haven't seen anything that makes me think that in 2012 Mr B was someone with an informed experience of pensions and investments; and particularly in the field of self investing (or here investing in unregulated schemes).

He was close to 50 with limited pension arrangements and according to the SIPP application earning around £30,000 a year. It's not entirely clear if he was employed or self-employed, and descriptions of his work vary (but don't appear to have involved a level of financial experience or knowledge to suggest he was anything other than a retail client). There's nothing to suggest knowledge, experience or that he was well placed to make decisions and open his sole pension funds up to greater risk and potential self-management.

So I accept it's more likely than not that Mr B was approached and influenced and advised to transfer his pension funds at the time. I think this was done on the basis that they would be moved into a SIPP and invested thereafter. I don't accept Mr B would have been in a position to instruct his fund to be transferred, or to research or select SIPP providers, or select the unregulated investment that followed; nor do I think he would have been in a position to sufficiently comprehend the risks involved with what followed.

I have seen that it appears only limited SIPP providers might have been willing to accept the investment at the time. This may make it even less likely Mr B would have been acting independently, under his own will and thinking. And I don't think what took place was suitable for Mr B.

I don't accept any of the paperwork provided was sufficient to meet a reasonable threshold for ensuring the client knew and understood what he was doing. I don't accept Mr B could have or should have been expected to understand the potential consequences of being an execution only client.

I accept that on the face of it, it appears most, if not all contact and work was done from a distance and using the post. It seems to me this highlights and increases the duty placed upon a business to ensure a client fully understands the nature of his relationship with a business, and what is being done, in such circumstances. And that this is particularly true if a client's rights are to be limited in any way.

I have thought with care about SMP's role in this activity, and whether I think they did all they should have done. I have also considered with care the documents provided; and whether what's said about them is a reasonable construction or inference.

I understand SMP say any role they played wasn't substantive enough such as to attract any liability. They have raised questions about their own knowledge and what was done was being done on an execution only basis. In other words SMP suggest they are removed from the transfer and activity by several steps; and they have suggested this in different ways.

We were also told:

"As will be evident from the files, the process of setting up the SIPP was a multistage one. It did not take place at a single meeting and. Indeed, as many clients were located in different areas, often they would not require meetings. The documentation - Including the clear execution-only notices - was therefore sent to the clients, which meant that they have considerable time to review and consider the same and to understand the basis upon which SMP was acting (If there's was an SMP case - many were FIM files upon which AAF simply filed the transfer documentation shortly after joining SMP). The execution-only wording was In no way ambiguous and was therefore fully compliant under the regulatory requirements In place In 2012/2013".

But I don't think this is a true reflection of what took place; nor particularly in Mr B's circumstances. I consider these steps to be either artificial and at the very least unsatisfactory.

And I have seen the difficulties we have faced in obtaining information requested. I've also seen requests for information that tend to lead me to conclude that in the absence of intent to delay our investigations and decision-making, there is an inadequacy in SMP's record keeping.

These are matters that I consider can reasonably assist me, when it comes to assessing the reliability and credibility of submissions and information and whether things were done as they ought to have been.

I don't accept Mr B's situation reflects or contains the usual hallmarks of services being offered and completed on a non-advised basis. In practice I'd expect to see Mr B would have given a specific instruction to a business.

Here purported instructions and correspondence made available to this service follows a generic format. It bears a striking similarity to other similar instructions made around the same time to aaf and contains the same technical language that I don't accept would have been part of Mr B's working knowledge. I also think there is an inadequacy to the paper trail and the manner in which information is provided.

I haven't seen anything that enables me to fairly conclude SMP took steps to satisfy themselves about Mr B's background and experience and understanding. I think the generic and pro forma instruction basis was adopted as a model and applied to Mr B. I don't consider this to have been sufficient. If the issue of whether Mr B was a true non-advised, execution only client had been properly explored, I think it would have easily been appreciated that Mr B was not what was intended by an execution only client and may well have been undertaking unsuitable activity.

As I've explained I tend to accept that Mr B was advised to undertake the steps that followed as I haven't seen anything to suggest he had any other information by which to make a decision or choice.

I accept there have been changes in the direct guidance issued and regulatory framework of execution only work in complex and unregulated investments. But I don't accept the changes are so substantial as to have changed the landscape and understanding since 2012. Nor do I think I have used hindsight to reach my conclusions. And some of the submissions I've seen from SMP appear to agree with this and accept what the guidance we provided at the time.

I consider SMP had a duty to provide clear and credible evidence in relation to the work being execution only. And if this was part of a portfolio of work or business they took over responsibility for, I can't readily be persuaded that ignorance could be any defence to assuming liability.

This requirement was clarified by the pension review guidance provided in PIA Regulatory Update 33 of 1997 (which I believe has been referenced on the part of SMP) highlighted the care needed around purported execution only business. The update set out that:
"It should be noted that any significant body of these cases will require substantial justification as "true" execution only cases...

You should be particularly alert to doubts about the reliability of claims of "execution only" If there are danger signals such as a high level of apparent execution-only cases (more than 5 per cent of all transfer policies sold by the individual In question and/or by the Member as a whole), the use of technical terms by Investors unfamiliar with them, or numbers of Investors apparently couching their comments In the same phraseology.

Whilst I decide every case upon its individual facts, it is of concern and relevance here that SMP conducted or assisted in a substantial number of purported execution only cases within a very short space of time. We have asked what proportion of work these cases made up of SMP's work at the time, but haven't received an answer. I find it hard to accept it was less than 5 percent. We were told:

"There were 13 cases where all substantive documentation and the process was completed by AAF under the FIM banner, but a final completion letter was sent whilst AAF was operating under the SMP banner There were 28 cases where the process was undertaken and the substantive decision taken whilst AAF operated under the FIM banner, but the procedural requirements were completed under the SMP banner There were 35 cases where the whole process was undertaken by AAF operating under the SMP banner There are some cases where the whole process was completed by AAF under the FIM banner but the fee was received by AAF after It began operating under the SMP banner".

Although this is of course inconsistent with other representations made.

This amount of work highlights my earlier conclusion that any satisfactory review should have attracted attention and consideration. The acquisition of a trading style with ongoing business, using the model being used, tends to also highlight that SMP should reasonably have been particularly concerned to review aware such a significant amount of purported execution only clients.

Even if they could persuade or satisfy me that SMP shouldn't have been aware of this, prior to acquiring the trading style and client book; which they can't. As the update set out at the time the *"PIA's view Is that genuine "Execution Only" cases should be the exception rather than the rule with each member only having a small percentage of such business in this form".*

For completeness I also think the use of generic communications between adviser and client and the use of technical terms and common phraseology in letters is apparent here and also was something an adviser and any basic review should have been alive to. I also don't accept it can be reasonably said the documentation was clear enough to ensure Mr B understood the nature of his relationship with aaf, let alone SMP; nor how services were being provided to him. I don't think it can be said SMP were in a position to reasonably or properly conclude Mr B was an execution only client of theirs.

As I don't accept Mr B was truly an execution only client and I don't accept the regulatory field changed its approach to such work; I am not going on to consider a number of matters raised about MiFID and the Conduct of Business (COBs especially COBS 10) rules in great detail. I've read all that has been said with care, but I think this highlights the ongoing care required towards all such purported business and the need to assess whether such business is accurately described and appropriately applied and conducted.

I appreciate SMP say the rules at the time permitted people to open execution-only SIPPs in the way Mr B did, and aaf followed the COBS rules applicable in 2012 and early 2013.

From my understanding I think SMP have also suggested they complied with the appropriateness rules under MiFID for non-advised sale. This would mean, as I understand it, they are saying that in some cases, even true execution only sales, a business can be required to ask the consumer for more information to allow them to decide if the consumer has the necessary knowledge and experience to understand the risks involved in the transaction. I am not sure how SMP suggest they complied with this; I haven't seen evidence that enables me to reach that conclusion.

I've also seen submissions as to whether it can be properly said COBs apply.

I hope I have already made it clear, I don't accept the submission that it can properly be inferred that the regulator at the time approved the "*procedure and documentation for the carrying out of the.. execution only transfers*" from the FSA email.

Wider submissions have been made to this service on the understanding of the regulatory position and what would have been understood at the time in 2012. They said the primary concern of the regulator related to firms using claims of execution only to hide behind or not sufficiently explaining how services (execution only/ non-advised) were being provided. It wasn't a concern about execution only services per se. And a copy of an article from City Wire 2012 was attached.

I've also seen it said by SMP that *"clients clearly requested that AAF ceased dealing with them on completion of the requested transfer(s) and that the Investment of the funds available was their sole responsibility... Because we had no dealings with the Investment of the SIPP funds we are unaware of where they are/were invested and have no authority over any of the SIPPS or the Investments which complies with the clients written Instructions".*

I accept in relation to Mr B, the unregulated investment was made some time after the SIPP was opened and his initial funds transferred in. A copy of this service's update from early 2006 was also attached which included commentary on execution only work and the PIA Update 33 from 1997. SMP went on to highlight the further steps taken by the regulator and within the industry and referred to a 2013 Moneymarketing report of a round table discussion held with the industry. SMP said it was right to adopt the commentary and approach set out by the industry commentator in the article. I think the thrust of this material tends to support my thinking and my perception of Mr B as not being a non-advised client and how SMP's work ensured unsuitable actions including an unsuitable investment, were completed in respect of Mr B.

I don't think Mr B would have realised it was intended to be said reasonably that he wasn't advised; nor what the consequences of this might involve. But I also accept that the intent behind the transfer and SIPP being opened was always to make an investment. Based on what I've seen, I think this investment was always likely to involve AAA; as it did here.

I don't think SMP did all they ought to have done, not only to satisfy themselves about Mr B and how he was being serviced as a client; but that this ought to have involved enquiry about the intent behind the transfer and new SIPP. And as I don't think the investment would have been made without the services rendered by SMP, I don't think it's unreasonable here, that SMP bear the liability for what followed.

For completeness I think the most basic of enquiries would have revealed the intent for an unregulated investment to follow; and I think here this ought to have made any competent firm concerned. Mr B doesn't reflect the most usual characteristics or circumstances of appropriate investors in such schemes. I have seen references to the industry climate and thinking at the time. And I think this ought to have made SMP particularly diligent in their approach. I've seen material provided more generally.

I have referred to delays experienced in the investigation of this complaint and my concerns about record keeping. I'm aware that one of the directors of SMP was the original compliance officer, but that in the spring of 2018 a new part-time compliance officer was appointed. From what I've seen, this service went on to provide some assistance to their new compliance officer. It appeared SMP didn't have the records of all complaints made to this service, documents relating to cases or views issued.

We have also assisted on the powers and procedures and processes of this service and I can see there has been a history of requests for time and questions being posed to us. As I have explained previously I particularly listened with care to the call SMP's compliance officer conducted with an adjudicator at this service and I offered the opportunity to provide oral representations as we were told at one stage that SMP's compliance officer was more comfortable with this. But having reviewed the history of when we sent out queries and requested documentations I think it's fair to conclude we didn't receive prompt or complete responses. We have sent reminders and I can see there is body of requests that remain unanswered.

I accept we've been told variously that (May 2018) SMP have *"gone back to the people behind Alternative Asset Finance (AAF) and requested their assistance In helping us to answer your questions. As yet we have not received answers to our questions".* And that *"we will be submitting further evidence once* [the named aaf individual] *has answered questions posed to her ".*

It seems to me that SMP and their representatives have had reasonable time and been afforded a fair opportunity to provide information.

For completeness we were told at one stage there was a concern that SMP may have been the victims of a clone scam of a third party presenting themselves as advisers. And that in *"such an event any alleged advisor who Is not a CF 30 of St Martin's Partners LLP Is a fraud and we are not liable for the actions of fraudulent third parties".*

We asked for further information on this. Including why this was a concern and whether any law enforcement agencies had been contacted. We received no reply to these related queries and this concern has not been repeated again. Nothing was provided on this following my provisional decision. My thinking has been directed to what SMP are responsible for, and this includes work attributed to their regulated adviser. Mr B's complaint is made about what happened to his pension funds and I've had to look at whether I think SMP did something wrong and if so should they be responsible for any loss sustained by Mr B.

For completeness I previously asked SMP to comment on their knowledge of a reference to "*AAF Network SIPPs*". SMP have told us they have no knowledge of this.

I've seen Mr B thinks I ought to increase the payment to be made to him for his distress and inconvenience. I hope he understands it isn't the role of this service to punish a business and the awards we make in circumstances such as these tend to be modest. That doesn't mean I don't understand how worrying this will have been.

what SMP need to do

So for the reasons given I uphold Mr B's complaint. SMP need to complete the following loss calculation exercise to assess if Mr B has suffered a loss. If he has, SMP will need to address this.

In assessing what would be fair compensation, my aim is to put Mr B as close as possible to the position he would probably now be in if he had been dealt with adequately and provided with suitable advice. I don't think Mr B would have proceeded with the transfer and his funds would have remained in his original personal pension had he been adequately dealt with and advised.

In the circumstances the following loss calculation needs to be completed by SMP and redress should follow:

- Establish what the value of Mr B's plan would now be, had it remained in his original arrangement and remained invested in the same way as at the date of my final decision. (Sum A).

- Establish the value of Mr B's SIPP as at the date of my final decision. (Sum B).

My understanding is there have been no further payments into Mr B's SIPP after the initial transfer in or transfers out. So this should take account of the investment and all charges and fees applied.

- If Sum A is higher than Sum B, then Mr B has suffered a loss and this figure (Sum C) needs to be paid to Mr B as redress. If Sum B is higher than Mr B has suffered no loss.

If Mr B has suffered a loss the payment should be made into his SIPP to increase it by this amount. If this is not possible payment may be made direct to Mr B but adjustment should be made for the tax that would otherwise be paid on income derived from the SIPP. The notional tax should be calculated by applying Mr B's assumed marginal rate of tax in retirement (here assumed to be basic rate).

SMP are required to pay interest at 8% simple on any loss sum outstanding 28 days from the date of confirmation of acceptance of my final decision.

In addition SMP need to pay Mr B £450 for the distress and trouble he has been caused.

If, at the calculation date, the investment is illiquid (meaning it cannot be readily sold on the open market), it may be difficult to find the actual value of the investment. So, the actual value should be assumed to be nil for calculation purposes.

SMP will need to take ownership of the illiquid investment by paying a commercial value acceptable to the pension provider. This amount should be deducted from the compensation and the balance paid as above. If SMP are unable to purchase the investment the actual value should be assumed to be nil for the purpose of calculation. SMP may wish to require that Mr B provides an undertaking to pay them any amount he may receive from the investment in the future. That undertaking must allow for any tax and charges that would be incurred on drawing the receipt from the pension plan. SMP will need to meet any costs in drawing up the undertaking.

It would not be fair if Mr B has to continue to pay the annual SIPP fees if there are illiquid holdings preventing the SIPP from being closed. Ideally, SMP would take over any illiquid holdings, thus allowing the SIPP to be closed as appropriate now. So to give certainty to all parties, if there are illiquid holdings and SMP is unable to buy them from the SIPP, then it is fair that SMP pay Mr B an upfront lump sum equivalent to five years of SIPP fees (calculated using the previous year's fees). This gives a reasonable period to arrange for the SIPP to be closed.

my final decision

For the reasons given I uphold Mr B’s complaint about St Martin’s Partners LLP. SMP are required to complete the loss calculation exercise set out above. They must pay all sums due to Mr B. In addition they must pay him £450 to represent the inconvenience he has been caused.

Under our rules, I’m required to ask Mr B to accept or reject my decision before 22 July 2019.

Louise Wilson
ombudsman