complaint

Mrs S has complained about the advice she received to transfer her final salary pension to a self-invested personal pension (SIPP). That advice was given by Easy Financial Planning (UK) LLP. Easy Financial Planning was an appointed representative of WSW Financial Services Ltd (WSW).

Mrs S has also complained about the way Choices - Your Mortgage Solutions Limited advised her to invest her funds in the SIPP.

background

I issued my provisional decision on 15 November 2018. I set out the background as follows:

Mr and Mrs S attended a seminar about overseas investments. An unregulated business then introduced them to an adviser from Choices. As the adviser from Choices was not authorised to advise on pension transfers a referral was made to Easy Financial Planning.

In an email dated 23 July 2011 the adviser at Choices explained the process to the unauthorised business. As the adviser was not authorised for pension transfer business another adviser would need to be involved. It was likely that they would say not to transfer, but the transfer should go ahead anyway.

The adviser at Choices later said that another independent financial adviser (IFA) had been unable to continue with the process. That was because he was a member of a network. They wouldn't allow the transfer to go ahead.

A document referred to as a fact find was completed by the adviser at Choices. This recorded the client's personal and financial details. Easy Financial Planning then provided advice about the transfer of pension benefits to a SIPP.

The details recorded were that Mrs S:

- Had final salary pension benefits. The transfer value was enhanced by her former employer.
- Wanted to retire at age 65 with pension income of half of her salary.
- Completed and signed an attitude to risk questionnaire. This concluded that she was prepared to accept moderate risk.
- Wanted to invest in products offered by an individual from an unregulated firm. She understood that her final salary pension offered guarantees. But she was aware that they were providing enhancements to move away. She did not want to miss out on the opportunity. And she believed the variety of products in the new portfolio would offer a better return.

Easy Financial Planning sent a report to Mrs S. The growth rate required to match the benefits was 5.27% a year net of all fees and charges. The guarantees offered by the scheme would be lost on transfer. The advice was not to transfer her final salary pension benefits.

The report also explained Mrs S wanted to invest in overseas forestry using a SIPP. Mrs S had given answers on a risk profiling questionnaire. These indicated she had an attitude to risk of 5/10. This was classed as moderate. The advice was not to invest in offshore assets. Placing all of her pension fund into higher risk overseas assets did not meet her attitude to risk. The advice was not to proceed.

The report discussed risk and the concept of putting '*all of your eggs in one basket'*. This was a high-risk strategy.

Easy Financial Planning said that it was not asked to provide an opinion on the proposed investment schemes. And it accepted no liability on their use. It went on to suggest that it would be prudent to undertake research before considering investment. It also gave general advice that Mrs S should carry out her own due diligence. And that she shouldn't rely solely on the representations of others about the financial returns.

Mrs S then signed a letter explaining that she wanted to proceed with the transfer against the advice from Easy Financial Planning. The letter said that Mrs S wanted to proceed with the investments to balance her portfolio.

Easy Financial Planning then sent another report; it was titled '*transfer options report addendum'*. This again advised against making the transfer. It also explained that the investments were ultra-speculative. The aim of the report was to summarise Mrs S's current situation and objectives; and then to facilitate the transfer to a named SIPP provider.

Easy Financial Planning then arranged for the transfer to be made and the SIPP to be set up. In an email dated 16 December 2011 it said it was not involved in the purchase of any of the assets. However from experience it had found it easier from an administration point of view to handle all the documents and present them together.

The investments went ahead within the SIPP. There have been problems with the investments which cannot be sold. Mrs S now has a new adviser and complained to both Choices and Easy Financial Planning. Neither of those businesses upheld the complaints.

One of our adjudicators investigated this complaint. He thought that the complaint should succeed. In summary, he concluded that:

- The arrangement of the SIPP, the transfer of pensions and the investment into higher risk holdings were all unsuitable for Mrs S.
- Those actions all either caused or aggravated losses that have been suffered by Mrs S.
- Both Choices and Easy Financial Planning should each be liable for half of the total losses.

WSW didn't agree with the adjudicator. It provided a number of documents to support its position and has said that:

- The complaint should be against Easy Financial Planning rather than WSW.
- The client manipulated its process to obtain the outcome sought.
- It should be able to rely upon the communications it receives from clients as well as the financial adviser firms that introduce cases to it.
- In e-mail correspondence with both Choices and the unregulated business Mrs S acknowledged she had received its suitability report and would be ignoring the

advice. Although Mrs S might not have drafted the insistent client letter it is apparent her mind had already been made up.

- It had taken advice from the regulator, in a recorded phone conversation, on the position of clients who wish to transfer their pensions on an insistent client basis. The regulator had confirmed that:

- a regulated firm was responsible for the advice it gives;
- clients are not obliged to follow the advice given by an adviser;
- if a client is insistent a firm can arrange the investment without liability;
- if the product was unregulated there could be no regulatory involvement in respect of the investment.

- Principle 9, COBS 2.1.1R and COBS 9.2 from the regulator's handbook aren't relevant; it made no recommendations to invest in a product, but was actively advising against investing. Alternatively, if the principle and rules are relevant then it met their requirements.
- It should not be held liable for Mrs S investing either in the SIPP or in products which it explicitly advised against investing in.
- The adjudication uses FCA best practice that was published in 2014 to rule upon business written in 2011.
- It should be able to rely on the disclaimer within the report to pass responsibility for the losses to the clients.
- It received no payment for the investments after the SIPP was established.
- We should investigate the potential unauthorised payment made to Mrs S. E-mail correspondence suggests that Mr S was put on a commission deal as he knew a lot of potential clients. This indicates that Mr and Mrs S were working with the unregulated business. They were not the innocent parties in this transaction. The transfer would have taken place with or without its involvement.
- An e-mail dated 21 July 2011 indicates that deposits of £1,000 for the Harlequin investments had already been paid. This shows that Mr and Mrs S had already decided to invest.
- The appropriateness test form completed by Mr and Mrs S shows that they have not received advice about the investments in question. Those forms were dated after the presentation of its *'Addendum Report'* and show that the clients were not relying upon its advice and were acting alone.
- The SIPP provider should have some liability.
- It had informed Mrs S in no uncertain terms that the transfer of monies from the final salary pension scheme to the SIPP should not be made. And that the funds to be transferred into the SIPP should not be used to make unregulated investments.
- It was provided with a letter stating that the transfers should go ahead; it had no involvement in the production of that letter. It did not know that the wording had been provided by Choices.
- Following receipt of the insistent client letter, it wrote to Mrs S again advising her not to go ahead with the transfer. The transfer was then completed on an execution only basis. A document confirming that Mrs S was to be treated as an execution only client was provided.
- Easy Financial Planning acts as a bureau for other IFA firms. Its business model is to offer the clients of its IFA contacts advice without the payment of an up-front fee. It only receives a payment when the transfer is completed.
- One of its primary functions was to complete pension transfers on behalf of other IFAs who did not have the requisite permissions.

- It seems highly likely that but for its actions any number of other firms would have completed the transaction on an execution only basis or otherwise.
- Mrs S received monies from the unregulated business and the final salary scheme had an enhanced transfer value. These are both reasons for the transfer.

Since the original complaint was made Choices has been dissolved. Following this, Mrs S asked the FSCS to consider her complaint about Choices. The FSCS investigated that complaint. It concluded that any civil liability for the transfers complained about resided with WSW alone and not with Choices.

I set out my findings in my provisional decision. In summary, I explained the relevant rules that applied in this case. I agreed that Easy Financial Planning had given suitable advice to Mrs S. However I questioned whether Easy Financial Planning should have processed the transfer against its own advice. The role of Choices was important in the transfer.

Easy Financial Planning made a telephone call to the regulator to discuss accepting this type of business. The conclusion of that call was that there was a moral dilemma. But I concluded this was covered by the client's best interests rule.

Mrs S signed a letter to say that she wanted to go ahead with the investments having been advised not to do so. It referred to investing in a number of different unregulated investments to balance her portfolio. I concluded that this was not credible. The investments were high risk and speculative.

Easy Financial Planning told us that it received 33 enquiries from clients who wanted to invest in Harlequin and other investments. It advised 30 of these clients; all of whom were advised not to transfer the pensions. Of these 18 insisted on acting against the advice. I thought that was a high number of cases.

Easy Financial Planning was only paid if the transfer went ahead. This was a conflict of interest. It was an incentive for Easy Financial Planning to make the transfer.

I concluded that taking all of these factors together Easy Financial Planning should not have arranged the transfer.

WSW did not agree. Its representative replied and in summary said:

- WSW was required to complete the transfer by COBS 11.2.19. This was a rule at the time and not just guidance. Since the advice was given in 2011 new rules have been introduced to set out what firms should do when communicating with an insistent client. WSW met the standards of those rules before they had been introduced.
- The reference to the 1994 Pensions review guidance was not relevant.
- There was nothing at the time which required WSW to enquire as to the real reason for the transfer. WSW was given a reason which was to diversify the portfolio. The reason was likely to be that Mrs S expected to receive substantial returns from the investment. In addition, the very large payment had been overlooked.
- The fact WSW would only be paid if the transfer went ahead has no bearing on the transfer. WSW was allowed to be paid in this way.
- The role of Choices in the transfer was instrumental and a complaint should be made against Choices.

- There have been other cases against WSW that had similar facts. The adjudicators did not uphold the complaints. If it is appropriate to reach different conclusions I should explain why.
- Although this service does not have to consider causation it is relevant and should be taken into account. If WSW had not been involved this transaction would have completed anyway.

my findings

I've re-considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I've come to the same conclusion that I reached in my provisional decision and for the same reasons.

When considering what is fair and reasonable, I am required to take into account relevant law and regulations, regulator's rules, guidance and standards, and codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

I will now deal with the points raised by WSW's representative in response to my provisional decision.

Was WSW required to execute the transfer?

The first point raised was that WSW was under an obligation to execute the order. If it did not then it was in breach of the rules. However, this very point has been dealt with in a recent judicial review. In that case the judge said:

"I agree with the FCA's submission that COBS 11.2 is a section of the Handbook concerned with the method of execution of client orders, and was designed to leave a high quality of execution. It presupposes that there is an order being executed, and refers to the factors that must be taken into account when deciding how best to execute the order. It has nothing to do with the question of whether or not the order should be accepted in the first place."

So, in this case, WSW had to consider whether to arrange the transfer. I remain of the view that WSW should not have arranged the transfer.

Did WSW's actions meet the requirements of insistent client guidance issued since 2011?

WSW's representatives have quoted from some guidance issued in January 2018. I've repeated this guidance below.

COBS 9.5A Additional guidance for firms with insistent clients
Purpose

The *guidance* in this section is relevant where a *client* of a *firm* becomes an insistent *client*. The purpose of the *guidance* is to set out how a *firm*, when dealing with an insistent *client*, can comply with its obligations under:

(1) the *Principles* (see *PRIN 2*);
(2) the *client's best interests rule* (see *COBS 2.1.1R*);
(3) the *fair, clear and not misleading rule* (see *COBS 4.2.1R*);
(4) the *rules* on suitability in this chapter (*COBS 9* (Suitability (including basic advice)); and
(5) the *rules* on record-keeping (see *COBS 9.5* (Record keeping and retention periods for suitability reports) and *SYSC 9* (General rules on record-keeping)).

Who is an insistent client?

In this section, a *client* should be considered an insistent *client* where:

(1) the *firm* has given the *client* a *personal recommendation*;
(2) the *client* decides to enter into a transaction which is different from that recommended by the *firm* in the *personal recommendation*; and
(3) the *client* wishes the *firm* to facilitate that transaction.

Information to be communicated to an insistent client

(1) Where a *firm* proceeds to execute a transaction for an insistent *client* which is not in accordance with the *personal recommendation* given by the *firm*, the *firm* should communicate to the insistent *client*, in a way which is clear, fair and not misleading, and having regard to the information needs of the insistent *client* so that the *client* is able to understand, the information set out in (2).
(2) The information which the *firm* should communicate to the insistent *client* is:
    (a) that the *firm* has not recommended the transaction and that it will not be in accordance with the *firm's personal recommendation*;
    (b) the reasons why the transaction will not be in accordance with the *firm's personal recommendation*;
    (c) the risks of the transaction proposed by the insistent *client*; and
    (d) the reasons why the *firm* did not recommend that transaction to the *client*.

Acknowledgement from the insistent client

(1) The *firm* should obtain from the insistent *client* an acknowledgement that:
    (i) the transaction is not in accordance with the *firm's personal recommendation*; and
    (ii) the transaction is being carried out at the request of the *client*.
(2) Where possible, the acknowledgment should be in the *client's* own words.

I have carefully considered this guidance issued by the regulator. On the face of it, WSW appears to have followed the steps set out in this guidance. However, I have to take into account all of the evidence. It is clear to me that WSW was approached to arrange these transfers after another IFA had not been able to do so. I don't know the reason for that. But, I think it's likely that the compliance department would not allow the transfer. I think that is an example of industry good practice.

An unregulated introducer was involved in selling unregulated investments. These were clearly unsuitable for most retail investors.

WSW clearly understood that this was a risky transaction. That appears to be the reason why a telephone call was made to the regulator. But I don't think the employee at the regulator was given the full set of facts. And I don't think the guidance issued since then can cover every set of circumstances. One factor that I think is important is the number of insistent clients dealt with by WSW. I would expect the number of clients who act against advice given by a regulated adviser to be very small. This was the point made in the 1994 pensions review guidance. In my view, that is as relevant now as it was over 20 years ago.

The wording of the letter signed by Mrs S said: "*I wish to proceed with the investments in Harlequin, Bamboo, Agar Wood and Teak in order to balance my portfolio*." This does not appear to be Mrs S's own words. It certainly strikes me that someone else has written this for Mrs S to sign. Given that the investments to be made were unregulated and speculative the explanation does not make sense. It is not credible and should have been investigated by WSW. I remain of the view that WSW should not have processed the transfer of pension benefits or the investments.

Easy Financial Planning told us that from 2010 it received 33 enquiries from clients who wanted to invest in Harlequin or a combination of investments. It gave advice to 30 clients; all of whom were advised not to transfer their pensions. Of these 18 insisted on acting against the advice. That appears to me to be a high number of cases.

The transfer of pension benefits took some time. It is clear that a number of transfers were referred to Easy Financial Planning by Choices. We've been told this started in 2010. By the time Mrs S transferred her pension, I think Easy Financial Planning should have had concerns about the process.

Easy Financial Planning was only paid if the transfer was processed. This was a conflict of interest. I think it was an incentive not to act in Mrs S's best interests. Although such payments are allowed, it is not clear how that conflict of interest was managed.

Causation

WSW's solicitors have said that Mrs S would benefit from a payment from a non-regulated third party. They say this was about 11.5% of the amount transferred. The enhanced transfer value was also a reason for the transfer.

The enhanced transfer value gave an uplift of about 0.47%. It was a factor in the decision to transfer. Mr and Mrs S were chasing for the transfer to be made when delays occurred. There was some urgency about transferring the pension. It is clear that both Mr and Mrs S wanted to transfer before that enhancement was lost. I have therefore considered whether Mrs S would have transferred anyway.

There was a lack of clarity over the precise sums paid. So, we asked for full bank statements from Mr and Mrs S for a six month period.

I reviewed the payments received and identified those that were most likely to have been received as a result of investments made using the pension funds. The only other deposits were from Mr and Mrs S's employers, or I am satisfied are unrelated to any investments.

Although I cannot be certain, the details provided by Mr and Mrs S appear to be reasonable. Most of the payments appear to relate to details of investments made.

The payments received by Mr and Mrs S could have influenced their decision to transfer their pension benefits. I accept that it is possible that they would have transferred anyway. But, it is my view that the amounts involved were not large enough to cause them to sacrifice their pension benefits, if WSW had treated them fairly. The payments received were for about 10% of the amounts transferred. I haven't seen evidence that Mr and Mrs S urgently needed that money. So at the moment I still think that they wouldn't have transferred for the reasons given in my provisional decisions.

The payment that Mrs S received from the unregulated introducer was paid from the investments made. Those funds were received from Mrs S's pension. I think it's a reasonable conclusion that the unregulated introducer received more than 10% of the investment. That in itself means that the investment would need to perform very well to simply offset the sales costs.

Mrs S was putting a large part of her pension provision at risk. This was in return for a payment of about 10% of the value. In my view WSW should not have processed the transfer.

WSW told us it decided to stop taking business on an insistent client basis. This was after the regulator issued an alert about transferring monies to SIPPs to invest in unregulated products. It took the view this was a change to the position outlined to it in August 2011. I think this is the approach that should have been taken before Mrs S transferred her pension. It's also the approach taken by a different firm of advisers. In my view, no competent firm of advisers ought to have arranged the transfer knowing the background set out in this decision.

I remain of the view that if WSW had acted in Mrs S's best interests that it would not have processed the transfer. WSW therefore caused the loss suffered by Mrs S.

Duty of consistency

WSW's solicitors referred to other cases investigated by this service. They say those cases have similar facts and so should reach similar outcomes. I have considered those cases. They were resolved at the first stage of our process after an adjudicator gave an initial view. There are some differing facts in the cases. One of the important things is that I am aware that there were a large number of similar cases. I think it's likely all of these cases were investigated without that knowledge. It is therefore possible that those cases could have been decided differently by an ombudsman. In any event, I am not bound by previous decisions that have been made.

What concerns me the most is the reasons that Mrs S gave for ignoring the advice. It should have been clear that investing in the funds Mrs S selected did not balance her portfolio. So either the letter had been written by someone else or she didn't understand the investments. In my view, this should have been investigated before completing the transfer. Easy Financial Planning was only paid if the transfer completed. This is a conflict of interests and I cannot see how that was managed. This is a factor in my decision making.

Easy Financial Planning was aware that the transfer was unsuitable for Mrs S. And that the transfer was likely to leave Mrs S significantly worse off in retirement. In my view, Easy Financial Planning should have known that the adviser at Choices or the unregulated firm selling the investments was instrumental in the decision being made by Mrs S. I think it should have refused to process the transfer. It clearly wasn't in the client's best interests. I consider Easy Financial Planning to be responsible for any losses Mrs S has suffered.

I think that the combination of the wording of the "insistent client" letter and the number of insistent clients should have alerted Easy Financial Planning to potential problems. These factors should have indicated that it was unlikely Mrs S had decided herself to ignore the advice not to transfer.

It is possible that Choices could have some liability for the losses suffered. That issue has been dealt with by the FSCS. It is also possible that other parties could have some liability. But in my view, the investments could not have been made if WSW had treated Mrs S fairly. If WSW wishes to take action against any other party to recover some of the losses it may ask Mrs S to co-operate; that is if Mrs S is compensated in full.

fair compensation

My aim is to put Mrs S as close to the position she would now be in if she had been given suitable advice. I think that she would have kept her final salary benefits.

what did WSW do to contribute to Mrs S's loss?

Easy Financial Planning was paid commission of 3% for setting up the SIPP. It split this equally with Choices. Easy Financial Planning was also aware that an unregulated business was involved. It also dealt with all of the administration for setting up the SIPP and the investments.

WSW was required to act in the best interests of its client. This is the "moral dilemma" referred to when it spoke to the regulator. If WSW had acted in the best interests of its client, it should have refused to process the transfer.

The transactions would not have been made but for the involvement of WSW. Ultimately, I regard WSW as being responsible for the transactions which occurred.

did Easy Financial Planning's actions cause the loss?

WSW knew that the money transferred into the SIPP would be invested in unregulated investments. WSW realised that the investments were unsuitable. It exposed Mrs S's pension fund to significant risk.

the role of Choices

Choices was clearly involved in the advice to invest the pension funds. But, the transfer could not have been made unless WSW was involved.

the role of the unregulated firm selling the investments

Investments were sold to Mrs S by an unregulated firm. Any complaint about that firm cannot be dealt with by this service. One of the purposes of regulation was to provide consumer protection. I think it is appropriate that if losses are suffered the consumer should be compensated for the actions of the regulated firm. Being a regulated adviser comes with responsibilities. If WSW wants to take an assignment of any rights Mrs S may be able to give against any third parties it may do so; if compensation is paid in full.

the role of the SIPP provider

It is possible that the SIPP provider could have prevented the investments being made. But, I think the primary reason for the loss was the actions of regulated firms giving advice to Mrs S. Again if WSW wishes to take an assignment of any rights of action against the SIPP provider in may do so; if compensation is paid in full.

the role of Harlequin and those involved with Harlequin

I am aware that there is currently an investigation into the actions of those associated with Harlequin. WSW could argue that any losses were not its fault and that it cannot reasonably be held responsible for the loss. However, it does not necessarily follow that it would not be fair or reasonable to conclude that WSW is responsible for Mrs S's loss.

The outcome of any proceedings that may arise is not yet known and may be some way off. I am not in a position to make any judgment about the conduct of those involved in the management of Harlequin. But I acknowledge that it may be relevant to how I determine fair compensation for Mrs S. And I can understand why WSW considers that other parties are responsible, either wholly or in part, for Mrs S's loss. I have considered that very carefully, along with more general issues of causation and foreseeability.

How a fund is managed is an inherent and foreseeable risk. But where there may have been fraud in connection with the running of a fund then this might mean there has been a break in the 'chain of causation'. This break might mean that it's not fair to say that all of the losses suffered by a consumer flow from the unsuitable advice.

In my view, there is no doubt that Mrs S would not have made the investment if WSW had taken the appropriate action. There is enough evidence here for me to conclude that WSW was not acting in its client's best interests. I think that fair redress means that it should compensate Mrs S for the loss of her pension fund. That includes the investment loss that could not have happened, but for its advice.

I think that the losses were foreseeable. These were high risk investments. They were unusual holdings, operating in a very specific way and without a track record. They were complex investments that were not easy to understand. They could suffer large losses, the nature of which would be difficult to predict or estimate at the outset.

I am satisfied that Mrs S would not have invested, but for the actions of WSW. In my view, it is fair to assess compensation on our usual basis – aiming to put Mrs S in the position she would have been in but for the unsuitable advice - despite any arguments around any fraud breaking the chain of causation.

what should WSW do?

My aim is to put Mrs S in the position she would now be in if she had received suitable advice. I think that she would have: a.) kept her existing pension; b.) wouldn't have invested in Harlequin or the other investments; and c.) as a result wouldn't have opened the SIPP (and now be subject to ongoing SIPP fees). In setting out how to calculate fair compensation my objective is to address these three issues. That is what I'm trying to achieve.

There are a number of possibilities and unknown factors in making an award. While I understand Harlequin could allow WSW to take over the investment from Mrs S that is now unlikely.

All the variables are unknown and each may have an impact on the extent of any award I may make. The facts suggest it's unlikely that the property will be completed and unlikely that the contract and any future payments would be enforceable. While it's complicated to put Mrs S back in the position she would have been in if WSW had acted in her interests, I think it's fair that Mrs S is compensated now. I don't think I should wait and determine each and every possibility before making an award. What is set out below is a fair way of achieving this.

WSW should calculate fair compensation by comparing the value of Mrs S's pension, if she had not transferred, with the current value of her SIPP. In summary:

1. For the final salary scheme; review this transfer in line with the methodology issued by the Financial Conduct Authority in October 2017.

2. Obtain the actual transfer value of Mrs S's SIPP on the date of calculation, including any outstanding charges.

3. Pay a commercial value to buy Mrs S's share in the Harlequin Property investment.

In addition, WSW should:

4. Pay five years' worth of future fees owed by Mrs S to the SIPP.

5. Pay Mrs S £250 for the distress and inconvenience caused.

I have explained how WSW should carry this out in further detail below.

1. For the final salary scheme; review this transfer in line with the methodology issued by the Financial Conduct Authority in October 2017.

This calculation should carried out as at the date of my final decision; using the most recent financial assumptions published (at the date of this decision). This should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mrs S's acceptance of the decision.

WSW may wish to contact the Department for Work and Pensions (DWP) to obtain Mrs S's contribution history to the State Earnings Related Pension Scheme (SERPS or S2P). These details should then be used to include a 'SERPS adjustment' in the calculation, which will take into account the impact of leaving the occupational scheme on Mrs S's SERPS/S2P entitlement.

There should also be a notional deduction allowed for in the calculation. This deduction is for any monies that were paid to Mrs S for the transfer and investments this complaint concerns. This should include any payments Mrs S might have received from the unregulated business and also the repayment of the £1,000 Harlequin deposit. We have explained to the parties those payments to be allowed for and when they were paid to Mrs S.

If the review calculation demonstrates a loss, the compensation should, if possible, be paid into Mrs S's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mrs S as a lump sum. Had it been possible to pay the compensation into the plan, it would have provided a taxable income. Therefore the compensation may be reduced to notionally allow for any income tax that would otherwise have been paid.

The notional allowance should be calculated using Mrs S's marginal rate of tax in retirement. Mrs S is likely to be a basic rate taxpayer in retirement. The notional allowance should equate to a reduction in the total amount equivalent to the current basic rate of tax. However, as Mrs S would have been able to take a tax free lump sum, the notional allowance should be applied to 75% of the total amount.

Simple interest should be added at the rate of 8% a year from the date of my decision until the date of payment. Income tax may be payable on this interest.

2. Obtain the actual transfer value of Mrs S's SIPP on the date of calculation, including any outstanding charges.

This should be confirmed by the SIPP provider.

3. Pay a commercial value to buy Mrs S's Harlequin Property investment.

The SIPP only exists because of the investment in Harlequin. In order for the SIPP to be closed and further SIPP fees to be prevented, the Harlequin investment needs to be removed from the SIPP. I understand this can be done. However, I understand that is now unlikely.

The valuation of the Harlequin investment may prove difficult, as there is no market for it. To calculate the compensation, WSW should agree an amount with the SIPP provider as a commercial value, and then pay the sum agreed plus any costs and take ownership of the investment.

If WSW is unable to buy the investment, WSW should give it a nil value for the purposes of calculating compensation (including in step 1 above).

4. Pay five years' worth of future fees owed by Mrs S to the SIPP.

Had WSW acted in Mrs S's best interests I don't think there would be a SIPP. It's not fair that Mrs S continues to pay the annual SIPP fees if it can't be closed. To provide certainty to all parties, I think it's fair that WSW pay Mrs S an upfront lump sum equivalent to five years' worth of SIPP fees (calculated using the previous year's fees). This should provide a reasonable period for the parties to arrange for the SIPP to be closed. There are a number of ways they may want to seek to achieve that. It will also provide Mrs S with some confidence that she will not be subject to further fees.

In return for that, WSW may ask Mrs S to provide an undertaking to account to it for the net amount of any payment she may receive from the Harlequin investment. That undertaking should allow for the effect of any tax and charges on the amount she may receive from the investment. WSW will need to meet any costs in drawing up the undertaking. If WSW asks Mrs S to provide an undertaking, payment of the compensation awarded may be dependent upon provision of that undertaking.

5. Pay Mrs S £250 for the distress and inconvenience caused.

Mrs S has been caused some distress by the loss of her pension benefits. I think that a payment of £250 is appropriate to compensate for that distress.

my decision

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £150,000, plus any interest and/or costs that I consider appropriate. If I consider that fair compensation exceeds £150,000, I may recommend that WSW pays the balance.

I uphold the complaint and direct WSW Financial Services Ltd to pay fair compensation as set out above.

If the amount produced by the calculation exceeds £150,000 then, in addition to the £150,000 plus interest I recommend that WSW pays Mrs S the balance plus simple interest at a rate of 8% gross a year.

It's unlikely that Mrs S can accept my determination and go to court to ask for the balance of the compensation owing to her after the money award has been paid. Mrs S may want to consider getting independent legal advice before deciding whether to accept this decision.

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs S to accept or reject my decision before 1 April 2019.

Roy Milne
ombudsman