

## complaint

Mr L complained about Pacific IFA Limited. He said he was given unsuitable advice to transfer his pension funds to a self-invested personal pension (SIPP). The SIPP was set up to allow Mr L to invest in off-plan hotel developments in the Caribbean.

## background

Mr L took out a SIPP in the 1990s to allow him to invest in his own offices. That fund had a value of about £80,000 at the time he transferred his funds in 2010.

Around 2007 Mr L began working for an investment firm ("the firm") involved in the promotion of Harlequin Overseas Investments. Mr L was contracted on a self-employed basis as a marketing consultant.

Of note, around March 2009, while Mr L worked for the firm, its website said in relation to Harlequin,

*"Our developments offer excellent return on investment. With prices from £95,000, invest in an overseas property at one of our Luxury 5 Star Spa Resorts, offering the following advantages:- \* SIPP Inclusive \* Own the freehold • \* £1,000 reservation fee - nothing else to pay until completion \* 100% finance available - Harlequin pays your monthly interest payment on the 30% deposit \* 30 days free use per year \* 70% guaranteed mortgage from completion • \* Two year 10% rental guarantee followed by 50% net room rate share • \* No Capital Gains Tax, Buying Tax or Inheritance Tax"*

Around 2008 Mr L decided to invest in his first Harlequin property. He funded the initial 30% deposit through two unsecured bank loans. He invested initially £37,500. He said he did this as Harlequin was offering a finance package whereby it would pay the interest owed on the amount borrowed. As a result of investing he received commission of 1.5% of the full market value of the property. Mr L has explained that he was informed that while he was working for the firm he would receive commission if he introduced anyone who invested in Harlequin or if he invested himself. Mr L also introduced another person to invest.

Towards the end of 2008, Mr L became aware that some SIPP providers were allowing Harlequin to be invested within a SIPP. At this point Mr L explained he thought if he'd already invested in one he might as well invest through his SIPP as well. At this stage he paid a £1,000 reservation fee.

Mr L discovered his existing SIPP provider wouldn't allow the investment. Harlequin, via the firm, pointed Mr L to a different SIPP provider. As a result Mr L transferred his pension to the second SIPP provider. This was at a cost of about £1,900 paid to a different independent financial advisor (IFA). However, after that transfer had taken place, the second SIPP provider said it wouldn't allow the Harlequin investment into the SIPP either.

Mr L went back and complained to Harlequin; having moved to the second SIPP provider on its recommendation. As a result, they refunded him about half of the fee he'd paid to transfer the SIPP.

Harlequin then identified a third SIPP provider who would allow the investment. Mr L was referred to Pacific by the firm in December 2009 in relation to this transfer. To a large extent

this seems to reflect the same process that Mr L had gone through months earlier with the first IFA.

Mr L met with Pacific in December 2009 and a confidential financial review was carried out. At the time he was just over 65 years old. Little detail was taken within that confidential review. The notes indicate the information was not disclosed by Mr L. Mr L said he wasn't asked and if he had been he would have provided whatever details Pacific wanted to know.

Mr L said this was a short meeting. He said he was told by Pacific that the purpose was to "tick boxes" to get the transaction processed.

On 30 January 2010, Pacific produced a suitability report for Mr L. Mr L denied ever receiving this. That report said Pacific weren't associated with Harlequin. It said it wasn't offering any advice on the suitability of investment for him. The report recommended Mr L transfer to a particular SIPP provider to allow him to invest in Harlequin.

On the same date, Mr L signed application forms to open the third SIPP. Two weeks later Mr L signed contracts to purchase two further Harlequin properties – one in St Lucia and one in St Vincent and the Grenadines. For one, Mr L paid a 30% deposit of £45,000 from his SIPP. As before, he received a 1.5% commission payment on the full purchase price. Further details of the second property haven't been provided to this service but Mr L has confirmed he invested in two.

Some months later in 2010, Mr L informed the SIPP provider that he no longer wished to have Pacific recorded as his advisor.

In submissions to this service Mr L explained that he only advised the firm on marketing aspects and in particular putting together the firm's monthly newsletter. He said he didn't have technical investment knowledge about Harlequin. He had attended a number of presentations to understand the investment better so that he could gather ideas for marketing materials. He said he was familiar with what was being offered by Harlequin via the firm.

He said that in his time at the firm he felt pressured to perform and maintain his contract. He said *"I was therefore a softer touch than a regular member of the public. This pressure was further enhanced by the availability of commission."*

Mr L also said that the availability of SIPPs to the firm as a means to invest in Harlequin was *"the holy grail."* He said he found himself regularly preparing materials for the firm to promote the use of SIPP funds to invest. As Mr L already had a SIPP he explained *"I naturally became a target and found it difficult for all the above reasons to distance myself from a further investment."*

To date, Mr L's properties haven't been built and it's likely he has lost all of his original money from his SIPP.

Mr L complained to Pacific in February 2015. He said he'd received no advice whatsoever from Pacific. Pacific rejected his complaint. One of our adjudicators agreed with the business. She said, no matter the advice provided from Pacific, Mr L would have still transferred his funds and invested.

In response, Mr L has reaffirmed that if he'd been given advice not to invest and transfer his pension to do so - he would have followed that advice.

### **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 agree with the adjudicator. I think if Pacific had given suitable advice, Mr L would have still invested anyway.

Pacific said they had no obligation to advise Mr L on the suitability of the underlying Harlequin investments within the SIPP. It said it was agreed that it would only advise on the appropriate SIPP provider that would allow Mr L to carry out his objectives of investing in Harlequin.

The adjudicator referred to the FSA 2013 alert. That alert re-stated the rules that would have applied at the time of the advice to Mr L. The alert illustrated exactly the concerns raised by the regulator over the sort of model Pacific was carrying out. I reiterate part of the alert:

*"Financial advisers using this advice model are under the mistaken impression that this process meant they do not have to consider the unregulated investment as part of their advice to invest in the SIPP and they only need to consider the suitability of the SIPP in the abstract. This is incorrect."*

This reflected the rules that existed in 2009 / 2010. It is not a retrospective interpretation as Pacific has claimed. I don't intend to address all of Pacific's submissions in detail about why COBS 9.2 did apply to the advice given to Mr L. It's not the material part of my decision. I have also addressed many of the points raised by Pacific in other decisions regarding the business and won't repeat them here.

In summary, Pacific failed to give suitable advice. Pacific knew Mr L was only transferring his pension to the new SIPP for the sole purpose of investing in Harlequin. To determine whether that was suitable or not required Pacific to understand the property that the SIPP was going to invest in. To be able to advise in accordance with the rules, it had to understand the risks associated with the Harlequin investment. The purpose of COBS 9 is to ensure consumers get advice that's suitable in their circumstances. To interpret COBS 9.2 in a narrow way so that Pacific closed its eyes from the purpose of the SIPP would avoid looking at all of the factors that the rule (and the rest of Chapter 9) says are necessary to ensure suitability.

The property was high risk, highly illiquid and speculative. Mr L already had one Harlequin property. Placing a further, almost, £80,000 of his pension into further properties carried significant risk as an investment strategy. Pacific should have advised Mr L of the risks involved - especially taking into account how close he was to retirement

However, even if Pacific had given suitable advice, I still think Mr L would have gone ahead with his investment. Mr L was interested in the 70% mortgage offer made by Harlequin. In fact, the extract from the website mentioned above, reflected many of the attractive qualities that Mr L saw in the investment and which he said he believed he'd benefit from.

Suitable advice from Pacific wouldn't have been able to say that the mortgage offer would fail to materialise from Harlequin, that his properties wouldn't be built and that the promise of

high returns would fail to materialise. We know this now all with the benefit of hindsight. While Pacific could have advised Mr L not to transfer on the basis of the risks involved, I don't think this alone would have stopped Mr L. Mr L was involved in promoting Harlequin. I appreciate he wasn't a sales agent but he was still actively involved in preparing the material that would market Harlequin to SIPP investors. To that end he was immersed in the promises made about the investment – and I think from the evidence available he was, at the time, taken in by them.

He said he felt pressurised to invest in Harlequin by the firm to ensure his contract was renewed. He said that already owning a SIPP meant he felt there was further pressure on him to invest. He also benefited from the initial commission in doing so. I think taking all this into account, no matter the advice from Pacific, Mr L was intent on investing. This conclusion is further reinforced by the fact that two SIPP providers had already refused to allow the investment within Mr L's SIPP. He had two opportunities not to proceed with the investment over the course of a year. But he continued to pursue it and paid further money to do so.

I know this decision will be a disappointment to Mr L; but for all the above reasons, I don't think it's fair and reasonable to uphold his complaint against Pacific.

### **my final decision**

I don't uphold Mr L's complaint.

Under the rules of our service, I'm required to ask Mr L to accept or reject my decision before 20 June 2016.

Benjamin Taylor  
**ombudsman**