Complaint

Mr F complains about advice given by Martin Aitken Financial Services Limited (MAFS) to consolidate his pensions by transferring them to a Self-Invested Personal Pension (SIPP) and use a discretionary fund manager (DFM) to invest the funds held in his SIPP.

Background

I issued a provisional decision on 15 July 2020. I've recapped the background below:

In late 2014 Mr F was considering his investment and retirement options. He did some research online and contacted an unregulated introducer who referred Mr F to MAFS. MAFS' adviser and the introducer visited Mr F at his home on 14 January 2015. MAFS produced a Retirement Planning Report but Mr F didn't proceed with that.

MAFS reviewed Mr F's circumstances again and on 14 July 2015 produced a second report. It recorded that Mr F was 63 and in good health; had recently retired but had been earning £138,500 a year; was receiving a pension income of around £9,000 a year; had five defined contribution pensions with a combined value of about £1.1 million; and total assets, including his pensions, of around £2.3 million. His attitude to risk (ATR) was 5/10, described as a "balanced or 'Medium' attitude to investment risk with regard to your pension funds"

MAFS recommended that Mr F transfer his pensions to a SIPP and use a DFM, who I'll call Company H, to manage his investment portfolio. MAFS said Company H would analyse the results of Mr F's risk profile questionnaire and recommend a bespoke investment portfolio.

MAFS' charges were confirmed as an initial charge of 1% of the transfer value (£11,206) which was a reduction against MAFS' standard initial fee of 3%. MAFS would also receive an ongoing adviser charge of 0.5% per annum for annual reviews and ongoing advice.

Mr F accepted MAFS' recommendation and between 4 August and 24 August 2015 the total value of his pension funds (£1,156,892.77) was transferred to a new SIPP.

But Mr F had also, on 3 August 2015, sent a signed letter to a different DFM I'll call Company S confirming he wished to purchase units in its OWG Bond for £300,000. The letter said Mr F's trading account with Company S had been set up on an execution only basis by the SIPP provider and that any instructions to trade needed to come from Mr F.

On 6 August 2015 Mr F completed Company H's account opening form. It said he wanted to invest £840,000 with Company H. Under 'Investment Risk and Objectives' the following selections were both made to confirm Mr F's risk tolerance:

"Medium- some tolerance to fluctuation of capital value and/or current income in normal market circumstances

High- All of the portfolio can be subject to increased risk and the possibility of significant fluctuation of capital value. There is the potential for above average return to capital invested but also the risk of substantial loss, potentially in excess of your initial deposit. These products are not suitable to any investor who is seeking to preserve capital of to minimise their exposure to capital loss. By selecting high risk you are agreeing to invest through a managed CFD [Contract for Difference] account. An investment in CFDs carries a high risk of loss (…)"

The following statement was also made:

"I confirm I am willing to invest through a managed CFDs account. I also confirm that I am only investing money that I can afford to lose. I understand this is a high risk speculative product (…)"

The form said Mr F already had experience investing in Derivatives. In signing the form he confirmed the contents were correct, he understood the risks involved with CFD trading and no advice had been given by Company H.

Mr F says when he signed the form it was blank. He doesn't have derivatives experience.

Mr F's account with Company S was opened on 10 August 2015.

The SIPP provider emailed MAFS on 13 August 2015 outlining which of Mr F's funds had been received and which were outstanding. It also confirmed £56,359.75 had been sent to Company S for investment. On 21 August 2015 the SIPP provider confirmed to MAFS and Mr F that a further £243,740.25 had been transferred to Company S for investment.

On 25 August 2015 Mr F sent a signed letter to Company S confirming he wanted to purchase more units (£80,000) in the OWG Bond. The letter repeated that his SIPP trading account with Company S was execution only and instructions to trade had to come from him.

The SIPP provider confirmed to MAFS on 28 August 2015 that £80,000 had been transferred to Company S for investment and that MAFS' fee (£11,568.92) had been paid.

Company H wrote to Mr F on 14 September 2015 saying it was processing his request to open an account with it for £840,000 for investment in CFDs. It said it had noted from the account opening form that he had no experience with CFDs but he did have derivatives experience which he'd traded without advice. Because of this it said it deemed CFDs suitable for him. It asked Mr F to confirm its understanding was correct. As far as I'm aware Mr F didn't reply to Company H to correct any of what it had said.

On 17 September 2015 the SIPP provider emailed MAFS advising that an account with Company H had been set up for Mr F. It asked for confirmation of the amount he wanted to be sent to Company H for investment. It confirmed the SIPP cash balance was £764,577.05. The introducer later emailed MAFS asking it to email the SIPP provider instructing it to transfer £736,500 from Mr F's SIPP to Company H. The SIPP provider emailed MAFS on 1 October 2015 confirming that sum had been transferred to Company H (on 28 September 2015) and that Mr F's remaining cash balance was £27,987.

On 28 January 2016 Mr F (having met with the introducer the previous day) emailed him to confirm his interest in starting an investment account with another DFM I'll call Company B.

Mr F emailed the introducer on 9 March 2016 expressing concern about a loss of around £60,000 on his original investment with Company H. Mr F said the loss seemed high for a supposedly low risk investment. And MAFS emailed the SIPP provider on 23 March 2016 asking for Mr F's Company H account to be closed.

On 6 April 2016 the introducer emailed MAFS. He said he was aware Mr F's Company H account had been closed and Mr F's funds received and asking MAFS to instruct the SIPP

provider to send £660,000 of the returned funds to Company B. The SIPP provider emailed MAFS the next day confirming it had received the funds from Company H and asking whether MAFS wanted this money to be sent to Company B for investment and if so, how much. MAFS replied the same day, confirming £660,000 should be transferred to Company B.

On 8 April 2016 MAFS confirmed with Company B that Mr F's risk profile was medium. On 12 April 2016, £660,000 was transferred from Mr F's SIPP to Company B where it was invested, as I understand it, in high risk funds of limited liquidity.

Mr F emailed the introducer on 9 May 2016 asking for news on his investments with Company B. The introducer replied to Mr F, copying MAFS' adviser in, saying "Yes all good at [Company B]" and offering a time to catch up.

Mr F emailed the introducer on 16 June 2016 about losses on his Company B investments.

On 4 August 2016 the SIPP provider sent Mr F information about his SIPP. Mr F replied the same day, copying in MAFS. He said he was concerned about the investment advice he'd been getting from MAFS. His fund value had gone down from £1,156,800 to £1,089,197 in under a year. He asked that no further fees be paid to MAFS without his consent while he reconsidered his SIPP investment strategy.

Following Mr F's email, MAFS' adviser emailed the introducer saying:

"He's not happy and blaming us for the performance of his fund. DFM performance is out with [sic] our control, but bottom line, it was recommended by us. I have written to him (…) and said we hoped to meet up on our next visit."

The introducer replied later that day saying:

"I've spoken with [Mr F] just now and he's going to be fine any loss he had was while invested at [Company H] and he moved that himself before it got worse. After initial costs and charges he is down approx. 3% hardly a plummet (…) we can meet later in the month".

On 5 August 2016 Mr F emailed MAFS. He said, as he'd already confirmed to the introducer, he was extremely unhappy with how his pension investments had been handled and was concerned about Company H's investment strategy. He highlighted investment losses of £63,755 in just over seven months. He said he'd been assured Company B would be a safer and more reliable DFM. Company B's first proposed investment was bought for £82,147 and subsequently sold for £37,358, a loss of £44,789. He said the only good news was that his investments with Company S seemed to be doing well. Mr B asked that all his money be kept in his SIPP and not reinvested until he'd decided what to do next.

MAFS' adviser forwarded Mr F's email to the introducer the same day saying:

"This is the problem. I'm getting the blame for the performance of a DFM over which I have no control. If I put an investment portfolio together and it bombs, then fair cop, the buck stops with me. Here, I get a very unhappy client and I gave [sic] had no input as to how funds invested. It makes me look very bad (…)"

The introducer replied the same day:

"I agree with what you are saying and fully understand (…) we can meet up and discuss when I'm back week beginning 15th. With regards to [Mr F] when I spoke to him yesterday he was upbeat and thought he was ok, can't help but feel there is another agenda here (…) the facts are when initial fee is removed he is down under 4% which is not good but also not catastrophic in a year of turmoil (…)".

Mr F chased MAFS for a response on 30 August 2016. He also asked for a £5,445.95 fee paid to MAFS in error by the SIPP provider on 16 August 2016 to be returned. He reiterated that he'd asked the SIPP provider to freeze all outgoing payments from his SIPP.

MAFS replied to Mr F on the same day saying, amongst other things, that where there was a DFM, the day to day running of the portfolio was delegated to the DFM. The adviser said he'd noted from the SIPP provider's website that Mr F's fund value was currently £1,094,260. He offered to review Mr F's overall investment strategy.

Mr F asked that his concerns be treated as a formal complaint. But, after speaking to MAFS' adviser, Mr F agreed to withdraw his complaint until he'd met with the adviser and the introducer for his annual review.

Mr F and his wife, MAFS' adviser and the introducer met on 14 September 2016. The meeting notes record, amongst other things:

- *MAFS had recommended that Mr F transfer and consolidate his pensions in a SIPP and use Company H as a DFM; Company H was to analyse Mr F's risk profile questionnaire and recommend a suitable bespoke portfolio for him*
- *Company H met with Mr F and completed a risk assessment and an investment strategy mandate was agreed*
- *Mr F later became unhappy with how Company H was managing his portfolio, so he moved to Company B. Shortly afterwards he also became unhappy with Company B and he moved his portfolio to Company S*
- *a new risk profile questionnaire had been carried out by it and an investment strategy would be put together with six monthly valuations as well as a minimum yearly review*
- *MAFS' recommendation was to invest £500,000 "in a range of collectives- Unit Trusts and OEICS with a view to putting together an asset allocated diversified Portfolio"*
- *because of losses incurred with Company H, MAFS agreed, as a goodwill gesture, to waive future initial fees until further notice*
- *MAFS was also in contact with Company H on Mr F's behalf to see if it had deviated from the agreed investment mandate*

On 15 September 2016 MAFS emailed the SIPP provider instructing it to suspend all ongoing adviser fees until further notice. MAFS also emailed Company B asking for access to Mr F's account. The adviser said he wanted to be sure investments were in keeping with Mr F's ATR which, Mr F requested, should be no more than 4 out of 10.

The following day MAFS submitted a complaint on Mr F's behalf to Company H. MAFS also submitted a complaint on Mr F's behalf to Company B. MAFS also wrote to Mr F and confirmed the details of their meeting two days earlier.

Company H responded to the complaint on 21 October 2016. In summary it said Mr F had requested investment in a CFD managed account. Because CFDs involved a higher degree of risk, Mr F was given the necessary warnings. He'd advised he'd invested in derivatives

before. Company H hadn't given him any investment advice. It said it was satisfied his portfolio was managed in accordance with his investment objectives and risk profile.

MAFS' adviser met with Mr and Mrs F on 27 October 2016. He wrote to them the same day outlining their discussions. Amongst other things he said he hadn't had a response from Company H (although as I've said above it had replied on 21 October 2016). He'd received an acknowledgement from Company B (on 24 October 2016). He'd return Company S' Advanced Questionnaire to it to ensure, going forwards, Mr F's investments were in keeping with his ATR – likely to be Conservative or Defensive.

On 31 October 2016 MAFS sent Company S Mr F's completed Advanced Questionnaire. MAFS chased Company B on 30 November 2016 for a response and asked for copies of some documents. Company B replied on 7 December 2016 saying information would be provided by 16 December 2016.

The adviser was dismissed from MAFS on 21 December 2016.

On 25 April 2017 MAFS raised formal complaints against Company S on behalf of 23 of its clients, including Mr F, who'd been invested in the OWG Bond. In summary MAFS said:

- *it had been unaware its clients had been invested in OWG Bonds. There'd been a lack of due diligence by Company S in facilitating these transactions, especially when OWG was the holding company for Company S and owned 100% of its shares*
- *MAFS' clients had suffered significant losses as the OWG Bond was unsecured, low grade, high risk, illiquid investments with no secondary market*
- *Company S should have questioned the execution only letters to satisfy itself the instructions were valid, the clients had the required level of sophistication for such investments and weren't being unduly influenced by a third party. Some clients (including Mr F) had confirmed the signatures on the letters weren't theirs and that conversations about the OWG Bond had been with the introducer, not MAFS. MAFS believed the introducer fraudulently produced and signed the execution only letters*
- *the introducer wasn't regulated and MAFS questioned whether he'd received commission for the investments he sourced for Company S*

MAFS wrote to Company B on 27 April 2017 claiming compensation of £87,280.13 for Mr F's losses. The following day MAFS also wrote to Company H seeking compensation of £124,849.55 for Mr F.

In June 2017 MAFS referred Mr F's complaints against the DFMs he used and his SIPP provider to our service.

On 13 October 2017 MAFS emailed Mr F with an update on the complaint to Company S, which had gone into administration. MAFS said it was continuing to press the administrators for information including details of Company S's professional indemnity (PI) insurance.

My understanding is that Company H and Company B also went into administration. And that Mr F has made claims against Company H and Company B via the Financial Services Compensation Scheme (FSCS).

Mr F later referred his complaint about MAFS to our service. It was considered by one of our adjudicators who issued his assessment on 27 June 2018. In summary the adjudicator said:

- *Mr F had confirmed he was only complaining about the way his SIPP was invested and not the transfers to a SIPP so that's all the adjudicator had considered*
- *the adviser had been dismissed from MAFS. But MAFS was responsible for what he did (or didn't do) while he was working for MAFS*
- *the adjudicator hadn't seen any evidence that MAFS was aware of the investment strategy Company H was pursuing. So he didn't think MAFS could reasonably be held responsible for Mr F's losses with Company H*
- *Mr F's investments through Company B were made on 'advice' from the introducer. But MAFS was aware of that and had instructed the SIPP provider to send money to Company B. But MAFS did tell Company B that Mr F's ATR was medium, which was reasonably accurate. It didn't seem MAFS was ever made aware of the actual investment being made for Mr F by Company B. So MAFS wasn't responsible for Mr F's losses with Company B*
- *MAFS had failed to advise Mr F against investing in the OWG Bond with Company S. An adviser, if told the client has acted differently to what had been advised, should make further enquiries, especially if they know the client is following 'advice' from an unregulated individual. If MAFS had spoken to Mr F about the money MAFS knew had been sent to Company S, MAFS would have realised the investment wasn't suitable and then strongly advised Mr F against. He'd likely have followed MAFS' advice, despite his relationship with the introducer*
- *The execution only instructions sent to Company S meant MAFS had no knowledge of the Company S investments. But MAFS had acknowledged it was made aware of the investment on 13 August 2015. The first tranche of Mr F's investment in the OWG bond was made the next day. There wouldn't have been enough time to advise Mr F against or stop that. But MAFS could have prevented the further investments (on 21 August 2015 and 1 September 2015 of £325,000 in total).*

In response, MAFS' main points were:

- *it accepted that its adviser, when he became aware of Mr F's first investment with Company S (on 13 August 2015), should've questioned it and advised Mr F against investing in the OWG Bond. It's possible Mr F would've stopped investing with Company S and so his losses would have been reduced*
- *but that didn't fully reflect the advice from the introducer or his influence over Mr F. MAFS' control over Mr F's investment decision was inherently restricted, as the execution only letters demonstrated. The possibility that Mr F would have ignored advice from MAFS hadn't been addressed*
- *Mr F's losses were a direct result of the introducer's advice and not MAFS' failure to advise against. There'd been orchestrated deception by the introducer*
- *MAFS didn't agree it could've prevented the transfer to Company S on 21 August 2015. It couldn't be assumed, if MAFS had acted on the email of 13 August 2015, there'd have been enough time for Mr F to stop the transfer But MAFS accepted it could've halted the third transfer to Company S of £80,000 made on 27 August 2015*
- *Mr F's losses were also caused by the SIPP provider's failure to protect its clients' interests by not reviewing the investments recommended by DFMs and making sure they were on its permitted investments list. The SIPP provider was liable for Mr F's losses of £325,000. A complaint had been raised on Mr F's behalf accordingly*

The adjudicator considered what MAFS said but he didn't change his view. He asked MAFS to confirm if it was offering Mr F £80,000 compensation. MAFS said it wasn't – it said the whole situation, including the SIPP provider's role, should be considered at the same time.

Mr F agreed with the adjudicator's assessment. He added that, had MAFS advised him against the OWG Bonds, he may not have invested in them at all. He said MAFS was downplaying its adviser's role. And, if MAFS had taken control and made sure investments were made as described in the original Retirement Planning Report, the situation wouldn't have arisen at all.

Because no agreement could be reached the matter was passed to me for a decision. And my provisional findings were as follows:

I apologise to both parties for the length of time we've had this complaint.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I'm currently minded to uphold Mr F's complaint. I'll explain why. But before I do, I should emphasise that while I've taken note of all the arguments made by both parties, I've limited my response to the issues I consider to be central to this complaint.

Scope of my decision

Mr F has confirmed this complaint centres on investments made following the setting up of his SIPP and not the original advice he received to switch his pensions to a SIPP. Because of this (and as I haven't seen anything to suggest a SIPP wasn't suitable for Mr F) my decision will only deal with the investment arrangements made using Mr F's SIPP funds.

In addition to his complaint about MAFS, Mr F also has complaints with this service about the SIPP provider and the company he considers responsible for the introducer's actions.

To avoid any doubt, I should stress that my decision here solely concerns Mr F's complaint about MAFS' acts or omissions and the extent to which these have caused or contributed to Mr F's financial loss, if at all.

But I have also taken into account the interaction between MAFS and the introducer and the introducer and Mr F.

I don't think there's any dispute that Mr F was to some extent influenced by the introducer or that he was involved to some degree in the initial switch process and subsequent investment transactions. Three DFMs were involved too but I'm only looking at what MAFS did (or didn't do) and I make no findings about the DFMs. As Mr F's regulated financial adviser, MAFS had the significant and overriding responsibility to Mr F to provide suitable advice and act in his best interests.

MAFS' role and responsibilities

MAFS' recommendation was that Mr F switch his pensions to a SIPP and use Company H as the DFM to manage his investment portfolio. The retirement planning report said that Company H would then "analyse the results of Mr F's risk profile questionnaire and recommend a suitable bespoke portfolio".

It's my view that MAFS' recommendation regarding Mr F's pension switches to a SIPP, had to take into account and consider the suitability of the investments intended to be held within Mr F's SIPP. In providing the advice it gave MAFS was subject to the regulator's Conduct of Business Rules. And at the time of the advice I think the regulator had made its view clear that it considered in order to suitably advise on pension switching to a SIPP, a firm needed to consider the suitability of the underlying investments to be held in it.

Indeed, I note that on Mr F's L&C SIPP application form under "Professional Adviser Details", MAFS' adviser signed to confirm the following type of advice had been provided:

"Advice given at point of sale to client that takes account of the intended underlying investment strategy"

Here the intention was for another regulated firm (i.e. Company H) to select the underlying investments. But I don't think that meant MAFS' responsibilities ended once the SIPP had been set up, the funds transferred and the money was then available for investment. MAFS remained Mr F's financial adviser and so had overall responsibility and oversight in ensuring that Company H was broadly implementing the sort of approach that would reasonably be expected for Mr F's attitude to risk, notwithstanding that it was another regulated firm.

I'm mindful that in addition to the initial advice MAFS provided Mr F with which was for a fee (1% of the transfer value- £11,206), it was also agreed, for a fee of 0.5% of Mr F's SIPP fund value each year, that MAFS would provide "ongoing advice" and "annual reviews" to Mr F. Based on this I think there was a reasonable expectation (and agreement) that in addition to the initial advice provided, MAFS would also go on to monitor Mr F's SIPP, which would/had to include consideration of where Mr F's funds were invested and the overall suitability of investments given what had been established regarding Mr F's objectives and ATR. In other words, whether the DFM was broadly fulfilling the role it was intended to play in the management of Mr F's pension.

For simplicity I'll consider MAFS' responsibility and any potential arising liability for Mr F's losses by referring to each of the DFMs used to invest Mr F's SIPP funds in turn. But before I do this, I think it's important for me to determine whether MAFS' original assessment of Mr F's ATR was correct.

Mr F's ATR and objectives

MAFS' Retirement Planning Report said Mr F's ATR had been established using a Risk Profiling Questionnaire Mr F completed. MAFS concluded that the results of the questionnaire indicated Mr F's ATR was balanced or medium, "a 5 out of 10 rating where 1 is the lowest risk and 10 is the highest". And its Risk Profile described a medium investor as:

"You are willing to place a reasonable emphasis on growth investments and are aware that these are liable to fluctuate in value. You can tolerate some fluctuations and volatility. But you tend to stay away from the possibility of dramatic or frequent changes."

Based on Mr F's circumstances at the time I'm satisfied MAFS assessment of Mr F's ATR was reasonably accurate.

Considering MAFS' potential liability for Mr F's losses

To determine MAFS' liability for Mr F's losses, I've thought about what happened in light of the following:

- *Whether MAFS advised Mr F to use a DFM through which Mr F's money was invested*
- *Where MAFS did advise Mr F to use a DFM, whether it fulfilled its duty of care to Mr F as his adviser*
- *Where MAFS didn't advise Mr F to use a DFM, whether it was aware of investments being made which fell outside of its recommendation*
- *If MAFS was aware of investments that fell outside its recommendation, whether MAFS took any investigative, preventative or corrective action (as his ongoing adviser) to help mitigate Mr F's financial losses*
- *Whether MAFS facilitated, enabled or contributed in any way to Mr F's money being invested in ways it shouldn't have been*
- *Whether MAFS fulfilled its responsibility as Mr F's adviser, to act in his best interests and treat him fairly and reasonably*

Where I conclude that MAFS' actions directly led or contributed to investments going ahead which shouldn't have, I've also considered whether any acts or omissions by another contributing factor or party mean it wouldn't be fair to hold MAFS responsible for all of Mr F's losses.

Investments made with Company H

MAFS' advice to Mr F included the recommendation he use Company H as a DFM. Mr F followed this advice. Mr F's fund was substantial and I don't think recommending that he use a DFM was inappropriate. MAFS understood Company H would recommend a bespoke portfolio for Mr F. MAFS had assessed (correctly in my view) Mr F's ATR as medium. However, £736,500 was invested in CFDs, which were very high risk and represented a lack of diversification for a very significant part of Mr F's SIPP fund.

First, I can't see that MAFS gave any instructions to Company H. In the circumstances I would've expected MAFS to have provided Company H with an investment mandate or at the very least a brief with details of Mr F's ATR. Or alternatively, to check how Company H broadly proposed to invest Mr F's money as a result of its own assessment. There's nothing to indicate MAFS did either of these things, and I think this was a failing on MAFS' part. But I'm also mindful of the wider circumstances surrounding the investment of Mr F's SIPP funds with Company H.

I've looked at Mr F's Company H Account Opening Form and can see that he signed it on 6 August 2015. I've set out above what the form said. My understanding is that although Mr F signed this form, he's since said it was blank when he signed it and that it's suggested the introducer completed the rest of the form and forwarded it to Company H.

The form was completed to show Mr F wanted to invest £840,000 with Company H. Mr F's risk tolerance was confirmed to be between "Medium" and "High". The form also confirmed Mr F had experience investing in Derivatives and that, although aware of the risks, he was happy to invest in CFDs.

In signing the form Mr F confirmed the contents of it were correct, that he understood the risks involved with CFD trading and that no advice had been given by Company H.

It's clear to me investing in CFDs wasn't appropriate given Mr F's ATR. MAFS has also agreed that Mr F investing in CFD's was "unsuitable". I haven't seen anything to suggest MAFS had any involvement in Mr F's Company H application to invest in CFDs. Although MAFS advised Mr F to use Company H in the first place, I'm mindful that it did originally say Company H would recommend a bespoke investment portfolio based on Mr F's risk profile. It's clear this didn't happen and based on the contents of the form and the fact Mr F was supposedly presented with a blank form by the introducer to sign, I think these factors ought to have indicated to Mr F that something was amiss.

I appreciate Mr F trusting the introducer may have led him to sign the blank Company H form. But I still think Mr F had responsibility to exercise due care with what he signed, while being mindful of what his regulated adviser, MAFS, had said was supposed to happen with Company H. If anything happening was at odds with what Mr F expected or what MAFS had said he ought to expect regarding the Company H investment, I think it's reasonable to have expected him to query this directly with MAFS. There's nothing to suggest this happened.

I've also seen that after Mr F's Company H application form was submitted, Company H did email Mr F, acknowledging receipt of the form and asking him to confirm the veracity of its contents. Mr F was asked to confirm he was willing to invest in high risk products like CFDs, despite no experience in these before. It also noted he'd said in his form that he had derivatives experience and traded these without advice. Company H said that on this basis it considered CFDs suitable for Mr F. But asked him to email it back to confirm the accuracy of what it had said. I haven't seen anything to suggest Mr F responded to Company H.

Based on Company H's email to Mr F after his application form was submitted, I think Mr F had the opportunity to identify any incorrect information that had allegedly been added to the form by the introducer after he signed it and to make a decision about halting his investment with Company H in CFDs. Mr F could've also contacted MAFS to query the matter if he was unsure. As this didn't happen Mr F's investment in CFDs with Company H went ahead.

Notwithstanding what I've said above, I don't think Mr F's actions (or inaction) here automatically absolves MAFS of any responsibility for Mr F's losses as a result of investments made via Company H. I'll explain why.

In addition to Mr F's actions, I've also considered whether, despite not appearing to be involved in the Company H application, MAFS had any awareness of Mr F's funds being invested in CFDs with Company H and what, if any, action it took following on from this awareness.

From what I've seen, the SIPP provider did confirm with MAFS that Mr F's Company H account had been set up and asked for confirmation of how much money to send to it for investment. Following this I note the introducer emailed MAFS and asked it to instruct the SIPP provider to transfer £736,500 to Company H.

It's not clear why the introducer was giving instructions to MAFS to pass on to the SIPP provider. Indeed I think this was wholly inappropriate in the circumstances. The unregulated introducer shouldn't have had any say or influence over where Mr F's funds were invested. And MAFS certainly shouldn't have acted on any instruction from the introducer regarding where Mr F's money should be sent. This is exactly what happened though and this wasn't the only time it did. Further to the introducer's email, on 17 September 2015 MAFS emailed the SIPP provider asking it to send £736,500 of Mr F's SIPP funds to Company H.

Rather concerningly, I've also seen evidence to suggest the introducer was providing MAFS with instructions for it to pass on to the SIPP provider regarding where other clients' funds should be sent.

The fact that the introducer was making requests for MAFS to pass on investment instructions to the SIPP provider, in my view indicates it was known the introducer had no authority to give such instructions and that any instructions given direct by him to the SIPP provider would not have been accepted, let alone acted on. The only way the introducer's instructions could get through was where MAFS facilitated this.

While I haven't seen anything to suggest that, prior to the submission of Mr F's Company H application, MAFS was aware Mr F's money was to be invested in CFDs, I do think MAFS is partly responsible for the fact this was able to happen at all. And I consider that it should've been aware, when instructing the SIPP provider to send a significant amount of Mr F's money to Company H, where this money was to be invested. Especially as it was acting on instructions provided by the unregulated introducer.

Ultimately, MAFS advised Mr F to use Company H. I've already explained why I think MAFS' recommendation had to include some awareness of where Mr F's funds would be invested by Company H-particularly given the circumstances here. Although it appears Mr F may have been influenced by the introducer and that the investment in CFDs was possibly initiated by the introducer, the fact remains that the investment itself wouldn't in all likelihood have been possible if:

- *MAFS had ensured it knew what mandate Mr F's SIPP funds were going to be invested with after it instructed the SIPP provider to send £735,500 of Mr F's money to Company H. Especially as this came off the back of the introducer's instructions to MAFS. Had MAFS done so I think it's more likely than not that it would've been aware the investments made using Mr F's funds weren't suitable and been able to take action to halt or reverse the transaction. As Mr F's regulated adviser I'm persuaded that Mr F would've listened to MAFS' corrective advice, over and above anything he may have been told by the unregulated introducer*
- *MAFS had provided Company H with confirmation of Mr F's risk profile (or otherwise 'checked in on' Company H's proposal as to how it was going to manage the funds). There's nothing to suggest this happened. And had MAFS done so it's possible Mr F's application to invest in CFDs may have at least been questioned by Company H, given how at odds it was with what MAFS should've confirmed Mr F's established ATR was*

As I've already said I don't believe Mr F exercised due care when he signed the blank Company H application form or when he didn't respond to Company H's email asking him to confirm the veracity of the information in the form. I'm also conscious of the role the unregulated introducer played in this transaction. Notwithstanding these things, and for the reasons I've set out above, I think it's fair and reasonable to hold MAFS for Mr F's losses as a result of investments made via Company H.

I'm mindful of MAFS' significant and overriding responsibility to Mr F to act in his best interests. Overall I think there were evident shortcomings by MAFS in its capacity as Mr F's financial adviser. And as a result, I'm not persuaded MAFS exercised the reasonable skill

and care required regarding the transaction that took place with some of Mr F's SIPP funds and Company H. MAFS' actions enabled the unsuitable investment to be made. Because of this I consider MAFS wholly responsible for Mr F's resulting losses. Were it not for MAFS' acts and omissions I don't find that Mr F's funds would've or could've been invested as they were with Company H.

Investments made with Company B

I've considered the investments made with some of Mr F's SIPP funds through Company B. I've not seen anything to suggest MAFS ever advised Mr B to use Company B as a DFM. It appears that Mr F's investment with Company B came about as a result of his dealings with the unregulated introducer. Indeed, the first mention of Company B in the available evidence comes in January 2016 in an email from Mr F to the introducer, in which Mr F says:

"I'm definitely interested in starting an account with [Company B]- especially their Strategic Income Model Portfolio."

Within this email Mr F confirms he met with the introducer the previous day and as well as discussing Mr F investing with Company B, they also discussed Company H's investment strategy and his SIPP.

The next mention of Company B comes several months after this email on 6 April 2016, after a request is made for Mr F's Company H account to be closed and around £672,000 of Mr F's original £735,500 investment is returned to his SIPP. At this point the introducer emails MAFS saying £660,000 of the funds returned to Mr F's SIPP should be sent to Company B. The introducer asks MAFS to pass on this instruction to the SIPP provider. Further to this MAFS emails the SIPP provider on 7 April 2016 requesting exactly what the introducer asked it to tell the SIPP provider to do with Mr F's money.

Again, I don't think it was at all appropriate for MAFS to act on instructions provided by the introducer regarding where Mr F's SIPP funds should be sent. MAFS was Mr F's adviser, not the introducer, so if anyone was considering a new destination for Mr F's funds it should've been MAFS, not the introducer via MAFS. The fact that MAFS never rejected the introducer's request or even questioned it (especially as the DFM mentioned wasn't the one MAFS had recommended) before passing it on to the SIPP provider suggests to me that MAFS was working comfortably and closely with the introducer. Based on MAFS' actions (or lack thereof) I think it's possible MAFS had either agreed with the introducer that Mr F's funds would be transferred to Company B (so it was happy passing the introducer's request onto the SIPP provider). Or that MAFS thought (incorrectly, in my view) that it could allow an unregulated introducer to direct the investment of Mr F's funds.

As Mr F's financial adviser MAFS had a responsibility to act in Mr F's best interests. I don't think it did this when it helped facilitate the transfer of Mr F's funds to Company B-especially not on the introducer's instruction. I think the fact that it did was a significant error. MAFS should've rejected the introducer's instruction and, if it believed the investment in Company B was appropriate after investigating how the funds would broadly be invested, explained this to Mr F in its own terms. And by not doing so, it failed to act fairly or reasonably towards Mr F.

I also think MAFS had a responsibility to query the intended investment with Company B with Mr F and check where Mr F's funds were intended to be invested with Company B. And upon recognising how unsuitable this investment was, it should've raised this with Mr F. Had

MAFS done so I think it would've become apparent that the introducer was acting well beyond his remit (albeit MAFS seemed to be allowing him to do so). At this point MAFS could've reminded Mr F that the introducer couldn't and shouldn't be advising him on where to invest his funds and alerted him to the inappropriateness of the proposed investment with Company B. The fact that MAFS took no action at all and instead helped the transaction go ahead, suggests as I said before that it may have been aware of how Mr F's funds were to be invested by Company B.

As Mr F's adviser, MAFS should've been aware of what mandate Company B was applying to its investment of Mr F's money. MAFS also shouldn't have allowed the transaction to go ahead until it considered this was broadly in line with Mr F's ATR – which evidently it was not. And at the very least, upon receiving the introducer's request MAFS should've spoken to Mr F and outlined the obvious risks and concerns regarding the transaction. I think that had MAFS warned Mr F against investing via Company B, it's most likely Mr F would've listened to MAFS and not gone ahead with the investment, given that he had already incurred earlier losses as a result of the introducer's involvement. Especially if MAFS had made it clear the introducer shouldn't have been advising him at all on where to invest his funds and that the proposed investment was unsuitable. Given what happened with Mr F's investments via Company S nine months earlier, I think MAFS was already (or ought reasonably to have been) aware of the potential issues with the introducer.

Notwithstanding what I've said above, I note that at the time MAFS passed on the introducer's instructions to the SIPP provider that £660,000 of Mr F's funds should be sent to Company B, it also told Company B that Mr F's Risk Profile was "Medium". But as I've already said, while I think this was a reasonable assessment of Mr F's ATR, I consider that MAFS also had a responsibility to follow up on the transaction and check that Company B's investment proposal for Mr F's funds broadly lined up with what was known about his ATR. Had MAFS done so at the time, I believe it would've realised that Mr F's portfolio with Company B was, as it now says, "totally unsuitable".

MAFS' actions enabled the unsuitable investment to be made. Because of this I consider MAFS wholly responsible for Mr F's resulting losses. Were it not for MAFS' acts and omissions I don't find that Mr F's funds would've or could've been invested as they were with Company B. I say this because:

- *although it doesn't appear that MAFS ever advised Mr F to use Company B as a DFM, upon receiving the introducer's instruction about where to send Mr F's funds and becoming aware the introducer was effectively advising Mr F to use Company B, MAFS ought to have contacted Mr F and alerted him to the issues with this transaction*
- *MAFS shouldn't have put through the introducer's instruction for the SIPP provider to send Mr F's funds to Company B without first conducting its own assessment of its suitability. Had MAFS not facilitated this transaction Mr F would never have been able to invest via Company B in the unsuitable funds he did*
- *although the investment via Company B never should've happened, MAFS should've made a point in the first place of being aware of where Mr F's funds were intended to be invested. Had this happened, corrective action could've been taken either to undo the investment transaction entirely or to ensure Mr F's money was invested in assets commensurate with his ATR*

- *based on what happened with Mr F's investments nine months earlier, I think it was foreseeable (or ought reasonably to have been) that there were potential issues with the introducer. Had MAFS acted on this earlier awareness, I think it's possible the investments made via Company B wouldn't have happened*

My understanding is that of the £660,000 originally invested via Company B, roughly £630,000 was returned. Mr F has also confirmed that in May 2019 he received £28,224.18 from the Financial Services Compensation Scheme (FSCS).

I recognise that it can be argued Company B's actions may have also separately caused some of Mr F's loss. So I have considered whether I should apportion only part of the responsibility for compensating the loss to MAFS. In the circumstances, though, I think it fair to make an award for the whole loss against MAFS.

As I have said, Mr F's complaint about Company B has been considered by the FSCS. As a result, I understand that Mr F is now in a position where he's received most of his capital back. However, it appears he may still have lost out on investment growth. This means an apportionment of only part of the loss to MAFS could risk leaving Mr F out of pocket. With this in mind – and recognising also that Mr F wouldn't have lost out at all but for MAFS' failings– I think apportioning responsibility to MAFS for the whole of the loss represents fair compensation in this case.

Investments made with Company S

I've considered the investment of some of Mr F's SIPP funds via Company S and whether MAFS is responsible for some or any of the losses Mr F sustained as a result. As was the case with Mr F's Company B investment, I've not seen anything to suggest MAFS ever advised Mr F to invest funds using Company S as a DFM.

The available evidence indicates that even before all of Mr F's pension funds were switched to his SIPP and before an account with the DFM MAFS had recommended (Company H) was set up, steps had been taken to set up an account for Mr F with another DFM, which MAFS hadn't recommended- Company S.

From what I've seen, a letter dated 3 August 2015 and signed by Mr F was sent to Company S stating that Mr F wanted to invest £300,000 in the Optima Worldwide Group Corporate Bond ("OWG Bond"). The letter also said Mr F's account had been set up on an execution only basis and that any instructions had to come from him. My understanding is that Mr F has since said that he neither wrote nor signed the letter or subsequent letters regarding his investment via Company S which included content very similar to the 3 August 2015 letter.

Further to the 3 August 2015 letter, I've seen that MAFS was made aware of the use of Company S for the investment of Mr F's funds when the SIPP provider emailed it on 13 August 2015 confirming £56,395.75 of Mr F's SIPP funds had been sent to Company S.

Upon receiving the SIPP provider's 13 August 2015 email, I consider that MAFS should've immediately recognised something was wrong. It should have noticed that of the pension funds it had advised Mr F to switch to a SIPP, a large proportion of these had been transferred to a DFM MAFS hadn't recommended Mr F use. Activity in Mr F's SIPP was clearly at odds with MAFS' original advice.

In the circumstances I would've expected MAFS to contact the SIPP provider to query the Company S transaction and establish how it had come about (especially given that only MAFS and Company H were meant to be able to give instructions regarding Mr F's SIPP funds). I would've also expected MAFS to have contacted Mr F to establish what if anything he knew about the transaction. Had MAFS, as Mr F's adviser, taken this action, I think it's likely MAFS would've discovered Mr F was possibly acting 'under the influence' of the introducer, and that he may have written the Execution Only letters and that the investment Mr F was intending to proceed with (an illiquid corporate bond) wasn't suitable or in line with his 'balanced' ATR. Indeed MAFS has said, "MAFS would have not recommended the [Company S] investments as they were high risk and therefore totally unsuitable for [Mr F's] ATR (…)".

Despite the influence of the unregulated introducer over Mr F I consider it more likely than not that, had MAFS warned Mr F against any investment via Company S, Mr F would've listened and attempts could've been made to reverse the initial transfer to Company S. I also doubt that Mr F would've agreed to the transfer of any more of his funds for investment in this way with Company S.

I haven't seen anything to suggest MAFS took any action following 13 August 2015 when it was notified of the first Company S transaction. And as a result, not only was Mr F's first tranche of money transferred to Company S for investment (and never reversed), but a second tranche of £243,740.25 was transferred on 18 August 2015 and a third transferred on 28 August 2015 for £80,000. Regarding the third transfer, MAFS, in its submissions to this service has said, it "(…) accepts the adjudicator's decision that MAFS could have halted the third transfer to [Provider S] of £80,000 (…) as MAFS accepts that AMD did have enough time to advise [Mr F] against the [Company S] investments before this time."

The SIPP provider notified MAFS on 21 August 2015 of the 18 August 2015 transfer to Company S for £243,740.25. A follow up email with the same information was sent to MAFS again on 25 August 2015. And on 28 August 2015 the SIPP provider emailed MAFS to confirm £80,000 of Mr F's funds had been sent to Company S for investment.

MAFS took no action following any of the SIPP provider's emails. Again, for the reasons I've already explained I think it should have.

I'm mindful that the initial tranche (£56,395.75) of Mr F's money transferred to Company S was invested on 14 August 2015- one day after the SIPP provider's email to MAFS. I don't think this was enough time for MAFS to have been able to advise Mr F against this investment and prevented it. But I do think MAFS could've reasonably helped with attempts to reverse the transaction. Although I can't say with any certainty that the reversal of this transaction would've been successful.

I do however think that based on the information MAFS received from the SIPP provider, it could've halted the transfer of Mr F's money and subsequent investments made on 18 August 2015 and 28 August 2015. Between 13 August 2015 and 18 August 2015 MAFS had enough time to contact Mr F and the SIPP provider, enquire about the 13 August 2015 transfer and advise Mr F against investing any further via Company S.

Overall I find that MAFS could've and should've prevented the 18 August 2015 and 28 August 2015 transfers of Mr F's money to Company S. And because MAFS took no action based on its awareness of the Company S transactions, I consider it responsible for the losses Mr F suffered as a result of these transactions going ahead.

I note that in its submissions to this service, regarding the Company S transactions, MAFS seems to accept its adviser failed to act as it should've in the circumstances. Indeed, it says:

"MAFS procedures are to confirm to clients that its investment recommendations have been actioned completely and funds transferred. In [Mr F's] case, such assurances could not have been given because of the diversion of funds to [Company S]. MAFS questions why AMD did not query this or document an explanation for the diversion of funds to [Company S] (…) AMD should have questioned the initial transfer to [Company S] on 13 August 2015 (…)

MAFS acknowledges that in light of the information AMD had and due to his knowledge that the first transfer had taken place to [Company S], he should have investigated the reason for the transfer and did not. Accordingly, it is MAFS' view that had AMD investigated the first transfer to [Company S], the subsequent transfer to [Company S] could have been halted (…)"

MAFS goes on to say:

"Whilst MAFS acknowledges that AMD had knowledge that the initial diversion to [Company S] took place and therefore should have undertaken an investigation of this diversion, MAFS at no stage advised [Mr F} to invest in [Company S] and did not advise [Mr F] to transfer funds to [Company S] (…) The involvement of MAFS (…) was limited to knowledge that the transfers had taken place (…) MAFS was inhibited in taking any action to prevent the transfers by the Execution Only letters (…) Losses attributable to the [Company S] investments have not been caused by MAFS (…)"

I've already acknowledged MAFS didn't appear to provide Mr F with any advice to invest via Company S. But I don't think that it therefore follows that MAFS has no further responsibility for the transaction. Although MAFS didn't advise Mr F to use Company S it was clearly aware of the large transfers of Mr F's funds to this company. MAFS had an obligation to at the very least query these, especially as they were at odds with the original advice it provided to Mr F. MAFS' inaction regarding the Company S transactions despite its awareness of them wasn't reasonable. And were it not for this inaction I don't think the 18 August 2015 and 28 August 2015 transfers would've happened. It follows therefore that I find MAFS responsible for the losses Mr F suffered as a result of these investments going through.

I don't accept MAFS' argument that the 'Execution Only' letters Mr F signed prevented it from taking any action regarding the Company S transactions. I say this because, as Mr F's listed adviser on his SIPP, MAFS had authority to liaise with the SIPP provider regarding Mr F's SIPP and where appropriate provide instructions. Despite Mr F's allegedly fraudulent execution only letters, MAFS could've and should've contacted Mr F about the Company S transaction. Following this MAFS could've contacted the SIPP provider to explain the situation and if necessary, could've also arranged for Mr F to confirm he wanted execution only letters to be ignored. Further to this necessary action to prevent the18 August 2015 and 28 August 2015 transfers going ahead could've been taken. By taking no action following the SIPP provider's emails about the Company S transactions MAFS failed to act in Mr F's best interests as his adviser.

MAFS' relationship with the unregulated introducer

Finally, and as to the role of the introducer, in its submissions to this service MAFS has said it was "the victim of an elaborate deception" by the unregulated introducer. It says the introducer "deceived [Mr F] and MAFS in holding himself out as a professional an experienced financial advisor. [the introducer] is not regulated (…) The losses which [Mr F] has incurred are a direct result of the advice given to [Mr F] from [the introducer]. MAFS did not endorse, nor would MAFS have endorsed, the advice given to [Mr F] by [the introducer."

Based on what I've seen I think it's possible MAFS wasn't fully aware of all of the introducer's actions or his interactions with Mr F. But the available evidence shows MAFS was, on several occasions, clearly conscious that certain things were wrong or amiss regarding Mr F's SIPP investments. I haven't seen anything to suggest MAFS acted reasonably in light of this awareness and as such I do consider MAFS responsible, given its position as Mr F's regulated adviser, for some of the losses Mr F incurred as a result.

The introducer was unregulated and MAFS has confirmed he referred 38 clients to it. In light of this I think MAFS ought to have carried out its own due diligence regarding the introducer and ensured its clients understood MAFS' relationship with him, the parameters of the introducer and MAFS' roles and what to expect. The introducer's involvement in Mr F's case clearly went beyond a simple referral. In addition to attending the advice meeting MAFS had with Mr F, there was correspondence between MAFS and the introducer regarding Mr F both after the initial advice and after Mr F complained and the introducer also sent emails to MAFS instructing it about where Mr F's money should be sent- instructions which MAFS acted on. I think it's clear that there was an established relationship between MAFS and the introducer and that they worked closely together. It's this arrangement that arguably enabled the introducer to act well beyond what was appropriate given his position as an unregulated introducer.

I think MAFS also caused avoidable confusion regarding the introducer's role and note that in MAFS' Retirement Planning Report it referred to the introducer as the "introducing IFA". At best this was incorrect, at worst I think it was misleading and could've given Mr F the incorrect understanding the introducer was able provide advice.

MAFS working so closely with the introducer during and after the provision of the initial advice gave rise to avoidable confusion. And I think this may have played a role in Mr F being persuaded/induced to make investments by the introducer that he wouldn't otherwise have done if he was clear about the introducer's role.

Although I haven't seen any evidence to show MAFS advised Mr F to invest via Company S or Company B, I think it's rather telling that after Mr F raised concerns with MAFS about his investments, MAFS emailed the introducer and said:

"[Mr F's] not happy and blaming us for the performance of his fund. DFM performance is out with our control, but bottom line, it was recommended by us (…)"

Although not clear what DFM MAFS is referring to here, the implication of what is said here supports the position that it was working with and providing recommendations to Mr F in conjunction with the unregulated introducer. This shouldn't have been happening and in my view demonstrates one of a number of ways in which MAFS fell short in its responsibility as Mr F's adviser. MAFS appears to acknowledge this when it says:

"MAFS acknowledges that (…) MAFS had a role in the investment advice for [Mr F] and had knowledge after the event of further investment alterations agreed between [Mr F] and [the

introducer]. MAFS agrees his actions in this case did not meet the professional standards that MAFS set for its independent financial advisors, nor did he follow accepted MAFS processes (…)"

The fact remains however that MAFS was the regulated adviser and irrespective of the introducer's actions, MAFS was responsible for the advice given to Mr F as well as any acts or omissions in its ongoing oversight of the SIPP (from which it was taking a fee) that led to Mr F suffering financial losses. As I've outlined above, MAFS was instrumental in some of Mr F's inappropriate investments going ahead. I consider that some of Mr F's losses flowing from this are MAFS' responsibility. I don't accept that anything the unregulated introducer did was an intervening act which completely absolved MAFS of its liability for some of Mr F's losses.

Fair compensation

My aim is to, as far as possible, put Mr F back in the position he would now be in, if MAFS, as his financial adviser, had met its responsibilities to act in his best interests and treat him fairly and reasonably.

From what Mr F has told us his losses are very large. Especially in respect of his investments with Company S. I understand he invested around £380,000 and he's received nothing back so far. Mr F invested £736,500 with Company H and got back some £672,744. And for Company B although, as I've said, Mr F appears to have got his capital back from the FSCS, he may have lost out on investment growth, for which I think he should be compensated. As Mr F will be aware, if those figures are correct, then his losses exceed the maximum award that I can make. I've referred to that further below.

As outlined above, I intend to hold MAFS responsible for 100% of Mr F's losses in respect of his investments with Company H and Company B. I intend to hold MAFS responsible for the full amount of Mr F's losses in respect of his investments made with Company S on 18 August 2015 and 28 August 2015. As I've already mentioned, MAFS' accepted it could've halted the 28 August 2015 transaction from going ahead.

I think Mr F would have invested differently. It's not possible to say precisely what he would have done. However, in line with what I've said above, I'm satisfied that what I've set out below (for each investment made) is fair and reasonable to compensate Mr F for the losses I believe MAFS should be responsible.

What should MAFS do?

<u>For Mr F's investments via Company H</u>

To compensate Mr F fairly, MAFS should:

- *Compare the performance of Mr F's investment with that of the benchmark shown. If the fair value is greater than the actual value, there is a loss and 100% of that loss is payable as compensation. If the actual value is greater than the fair value, no compensation is payable.*

  MAFS should add interest as set out below.

If there is a loss, MAFS should pay into Mr F's pension plan to increase its value by the amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.

If MAFS is unable to pay the compensation into Mr F's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the compensation should be reduced to notionally allow for any income tax that would otherwise have been paid.

The notional allowance should be calculated using Mr F's actual or expected marginal rate of tax at his selected retirement age.

For example, if Mr F is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal the current basic rate of tax. However, if Mr F would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation.

Income tax may be payable on any interest paid. If MAFS deducts income tax from the interest, it should tell Mr F how much has been taken off. MAFS should give Mr F a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

For Mr F's investments via Company B:

MAFS should carry out the same loss calculation I've outlined above for Mr F's Company H investment. If the fair value is greater than the actual value, there is a loss and 100% of that loss is payable as compensation as I've set out above.

For Mr F's investments via Company S:

MAFS should carry out the same loss calculation I've outlined above for Mr F's Company H investment. It should only use the value of the investments made via Company S on 18 August 2015 and 28 August 2015 to calculate any financial loss. If the fair value is greater than the actual value, there is a loss and 100% of that loss is payable as compensation as I've set out above.

investment name	*status*	*benchmark*	*from ("start date")*	*to ("end date")*	*additional interest*
Investment	*mixed*	*FTSE UK Private Investors Income Total Return Index*	*date of each investment*	*date of my final decision*	*8% simple per year from date of my final decision to date of settlement (if compensation is not paid within 28 days of the business being notified*

					of acceptance)

Actual value

This means the actual amount payable from the investment at the end date.

It may be difficult to find the actual value of the investment. This is complicated where an investment is illiquid (meaning it could not be readily sold on the open market) or the subject of a dispute while a company is being wound up, as I understand may be the case here. So, the actual value should be assumed to be nil to arrive at fair compensation. I believe this will apply to the OWG Bond. Ordinarily I would say MAFS should take ownership of the illiquid investment by paying a commercial value acceptable to the pension provider, but I don't think it's likely this will be possible here. So the actual value should be assumed to be nil for the purpose of calculation.

MAFS may require that Mr F provides an undertaking to pay MAFS any amount he may receive from the illiquid investments in the future. That undertaking must allow for any tax and charges that would be incurred on drawing the receipt from the pension plan. MAFS will need to meet any costs in drawing up the undertaking.

Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

Any withdrawal, income or other distribution out of the investment should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if MAFS totals all those payments and deducts that figure at the end instead of deducting periodically.

Why is this remedy suitable?

I've chosen this method of compensation because:

- *Mr F wanted capital growth and was willing to accept some investment risk.*

- *The FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's a fair measure for someone who was prepared to take some risk to get a higher return.*

- *Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mr F's circumstances and risk attitude.*

My provisional 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 Martin Aiken Financial Services Limited pays the balance.

***Determination and award:** I intend to uphold the complaint. I consider that fair compensation should be calculated as set out above. My provisional decision is that Martin Aiken Financial Services Limited should pay Mr F the amount produced by that calculation up to the maximum of £150,000 plus any interest on the balance as set out above.*

If Martin Aiken Financial Services Limited does not pay the recommended amount, then any investment currently illiquid should be retained by Mr F. This is until any future benefit that he may receive from the investment together with the compensation paid by Martin Aiken Financial Services Limited (excluding any interest) equates to the full fair compensation as set out above.

Martin Aiken Financial Services Limited may request an undertaking from Mr F that either he repays to Martin Aiken Financial Services Limited the net amount he may receive from the investment thereafter, or if possible, transfers the investment at that point.

Martin Aiken Financial Services Limited should provide details of its calculation to Mr F in a clear, simple format.

***Recommendation:** If the amount produced by the calculation of fair compensation exceeds £150,000, I intend to recommend that Martin Aiken Financial Services Limited pays Mr F the balance plus any interest on the balance as set out above.*

If Mr F accepts my determination, the money award is binding on Martin Aiken Financial Services Limited. My recommendation is not binding on Martin Aiken Financial Services Limited.

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

I invited Mr F and MAFS to respond to my provisional decision. Mr F responded and clarified a few points. But in essence, he agreed with my findings. MAFS responded and offered Mr F £150,000 in full and final settlement of his complaint, subject to him signing its settlement form and agreeing to certain conditions. Mr F rejected MAFS' offer.

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I see no reason to depart from my provisional decision.

I remain of the view that Mr F's complaint should be upheld on the basis I outlined in my provisional decision.

What should MAFS do?

<u>For Mr F's investments via Company H</u>

To compensate Mr F fairly, MAFS should:

- Compare the performance of Mr F's investment with that of the benchmark shown. If the *fair value* is greater than the *actual value*, there is a loss and 100% of that loss is payable as compensation. If the *actual value* is greater than the *fair value*, no compensation is payable.

  MAFS should add interest as set out below.

  If there is a loss, MAFS should pay into Mr F's pension plan to increase its value by the amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.

  If MAFS is unable to pay the compensation into Mr F's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the compensation should be reduced to *notionally* allow for any income tax that would otherwise have been paid.

  The *notional* allowance should be calculated using Mr F's actual or expected marginal rate of tax at his selected retirement age.

  For example, if Mr F is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal the current basic rate of tax. However, if Mr F would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation.

Income tax may be payable on any interest paid. If MAFS deducts income tax from the interest, it should tell Mr F how much has been taken off. MAFS should give Mr F a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

For Mr F's investments via Company B:

MAFS should carry out the same loss calculation I've outlined above for Mr F's Company H investment. If the *fair value* is greater than the *actual value*, there is a loss and 100% of that loss is payable as compensation as I've set out above.

For Mr F's investments via Company S:

MAFS should carry out the same loss calculation I've outlined above for Mr F's Company H investment. It should only use the value of the investments made via Company S on 18 August 2015 and 28 August 2015 to calculate any financial loss. If the *fair value* is greater than the *actual value*, there is a loss and 100% of that loss is payable as compensation as I've set out above.

investment name	status	benchmark	from ("start date")	to ("end date")	additional interest
Investment	mixed	FTSE UK Private	date of each investment	date of my final	8% simple per year from

		Investors Income Total Return Index		decision	date of my final decision to date of settlement (if compensation is not paid within 28 days of the business being notified of acceptance)

Actual value

This means the actual amount payable from the investment at the end date.

It may be difficult to find the *actual* value of the investment. This is complicated where an investment is illiquid (meaning it could not be readily sold on the open market) or the subject of a dispute while a company is being wound up, as I understand may be the case here. So, the *actual value* should be assumed to be nil to arrive at fair compensation. I believe this will apply to the OWG Bond. Ordinarily I would say MAFS should take ownership of the illiquid investment by paying a commercial value acceptable to the pension provider, but I don't think it's likely this will be possible here. So the *actual value* should be assumed to be nil for the purpose of calculation.

MAFS may require that Mr F provides an undertaking to pay MAFS any amount he may receive from the illiquid investments in the future. That undertaking must allow for any tax and charges that would be incurred on drawing the receipt from the pension plan. MAFS will need to meet any costs in drawing up the undertaking.

Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

Any withdrawal, income or other distribution out of the investment should be deducted from the *fair value* calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if MAFS totals all those payments and deducts that figure at the end instead of deducting periodically.

Why is this remedy suitable?

I've chosen this method of compensation because:

- Mr F wanted capital growth and was willing to accept some investment risk.

- The FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's a fair

measure for someone who was prepared to take some risk to get a higher return.

- Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mr F's circumstances and risk attitude.

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 Martin Aiken Financial Services Limited pays the balance.

Determination and award: I intend to uphold the complaint. I consider that fair compensation should be calculated as set out above. My provisional decision is that Martin Aiken Financial Services Limited should pay Mr F the amount produced by that calculation up to the maximum of £150,000 plus any interest on the balance as set out above.

If Martin Aiken Financial Services Limited does not pay the recommended amount, then any investment currently illiquid should be retained by Mr F. This is until any future benefit that he may receive from the investment together with the compensation paid by Martin Aiken Financial Services Limited (excluding any interest) equates to the full fair compensation as set out above.

Martin Aiken Financial Services Limited may request an undertaking from Mr F that either he repays to Martin Aiken Financial Services Limited the net amount he may receive from the investment thereafter, or if possible, transfers the investment at that point.

Martin Aiken Financial Services Limited should provide details of its calculation to Mr F in a clear, simple format.

Recommendation: If the amount produced by the calculation of fair compensation exceeds £150,000, I intend to recommend that Martin Aiken Financial Services Limited pays Mr F the balance plus any interest on the balance as set out above.

If Mr F accepts my determination, the money award is binding on Martin Aiken Financial Services Limited. My recommendation is not binding on Martin Aiken Financial Services Limited.

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

My final decision

I uphold the complaint and direct Martin Aiken Financial Services Limited to calculate and pay compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 14 September 2020.

Chillel Bailey
ombudsman