Financial Ombudsman Service

Complaint

Mr R complains that he was given unsuitable advice by a Registered Individual (Mr S) of Quilter Financial Planning Solutions Limited to switch his existing pensions to a Self-Invested Personal Pension (SIPP) and make investments in the shares of two unlisted companies. Mr R says Mr S told him the investments were solid and would give a very good return (about a ten-fold return) and that Mr S told him he had invested personally. Mr R says he has since found out that Mr S's business partner was the director of one of the companies he invested in. And he has lost all the money he invested in the two companies. He believes he should never have been advised to switch from his existing pensions and invest in shares of the two companies, as they were high risk investments and he had no investment experience, and no savings or investments other than his pensions.

Background

This complaint relates to events in or around early 2010. Mr R says he had previously received advice from Mr S on his mortgage. Mr R says Mr S contacted him, and said he wanted to give Mr R advice on his pensions. At this time Mr S was a registered individual of Quilter Financial Planning Solutions Limited (which was called Positive Solutions at the time, and I have referred to it as such in my decision) and he was listed on the Financial Services Authority (FSA) Register as holding the CF30 controlled function at Positive Solutions. Mr S traded as Real Wealth Management, which was a trading style of Positive Solutions. Mr R says, when he and Mr S met to discuss his pensions, Mr S presented him with a business card (which Mr R has provided us with a copy of) and said he was under the umbrella of Positive Solutions, which gave Mr R says gave him some reassurance.

Mr R says he was advised by Mr S to switch four personal pensions into a SIPP and then to make investments in two unlisted companies - Daval International Limited and Lightstep Limited. The SIPP was opened in January 2010. The SIPP application from was sent to the SIPP operator by Mr S. The application was sent with a covering letter, signed by Mr S, on Positive Solutions headed paper. Mr S's details were recorded in the "Financial Advisor" section of the application form, including Positive Solutions' FSA number and Mr S's Positive Solutions email address. The application form also confirmed that Mr S would be making investment decisions on Mr R's SIPP.

On 24 February 2010, four payments from the provider of Mr R's personal pensions were received into the SIPP, totalling around £35,300 (a tax credit of around £1,930 was also later paid into the SIPP). On 3 March 2010 Mr R's SIPP purchased £10,260.00 of shares in Daval, and on 10 March 2010 Mr R's SIPP purchased £23,200 of shares in Lightstep. These shares currently have no realisable value.

At the time of the events subject to complaint the business model followed by Positive Solutions was that it was an independent financial adviser firm authorised by the FSA, which gave advice through registered individuals. The registered individuals were self-employed agents of Positive Solutions, not employees. Nor were the registered individuals appointed representatives under s39 of the Financial Services and Markets Act 2000 (FSMA).

Mr R complained to Positive Solutions about the advice he had received. In response, Positive Solutions said it considered that Mr S was acting independently from it at the time of the acts complained about. It also said that, in any event, it did not authorise Mr S to carry out such acts.

Our investigator concluded Mr S had given advice to Mr R, that Positive Solutions was responsible for the advice, and that Mr R's complaint should be upheld.

On Positive Solutions' responsibility the investigator said, in summary:

- He was satisfied that Mr S did advise Mr R to switch his pensions into a SIPP, and to invest in the shares.
- So he was satisfied Mr S carried out the regulated activities of advising on and making arrangements for somebody to buy or sell or subscribe for a security or relevant investment.
- The picture – in terms of what Mr S was authorised to do by Positive Solutions at the time - is incomplete (for example, the SIPP operator was included on a list of approved providers dating from 2013, but no list for 2010 has been provided). But, taking all of the available evidence into account, there was not enough to say that Mr S was acting with Positive Solutions' actual authority.
- However, taking all of the available evidence into account, he was satisfied that, in the circumstances of this complaint, Positive Solutions did represent to Mr R that Mr S had its authority to give the advice subject to complaint.
- He was also satisfied that Mr R reasonably relied on those representations. So Positive Solutions gave apparent or ostensible authority.
- He was satisfied it is fair to hold Positive Solutions responsible for the acts subject to complaint, in the circumstances.
- He also considered Positive Solutions could be held vicariously liable for the acts subject to complaint.
- Finally, he considered that if the advice wasn't suitable, then (subject to the recognised defences), Positive Solutions was responsible in damages to Mr R under the statutory cause of action provided by section 150 FSMA. So section 150 FSMA provided an alternative route by which Positive Solutions is responsible for the acts complained of.

For all these reasons, the investigator concluded Mr R's complaint was one we could consider against Positive Solutions.

In terms of what was fair and reasonable in the circumstances of the complaint, the investigator said:

- Suitable advice needed to take account of both the pension switches and the proposed investments.
- He hadn't seen anything that would indicate Mr R was an experienced investor or that he could afford to take significant risk with his pension provision.
- Instead, the opposite appears to have been true – Mr R appears to have had very limited investment experience and didn't have any other pensions.

- The shares Mr R invested in were unlisted, high risk and speculative. The two companies were newly formed, had no track record, and there was a possibility both would fail, and his investments would be lost. Mr S knew (or ought to have known) this.

- So Mr S should have concluded the switches to the SIPP were not suitable, and should have advised Mr R on that basis.

- He was satisfied that, had Mr S given suitable advice, Mr R would not have switched his pensions to the SIPP and made the investments into the shares.

Positive Solutions did not respond to the view. We recently told it an ombudsman would likely be making a decision, and invited it to make any further submissions it wanted me to take into account. In response, Positive Solutions said:

- It didn't provide authority to Mr S in respect of these investments. Mr S wasn't authorised to provide advice on single company shares either through Positive Solutions or the FCA.

- It had no business relationship with any of the entities involved

- It received no remuneration in respect of the investments.

Positive Solutions has made no other submissions.

My findings

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

Jurisdiction

The basis for deciding jurisdiction:

I must decide whether we have jurisdiction to consider this complaint on the basis of our jurisdiction rules (referred to as the DISP rules), including the relevant law they are based on or incorporate, based on the relevant facts of the complaint which I must decide on the balance of probability when in dispute.

I cannot decide the issue on the basis of what I consider to be fair and reasonable in all the circumstances. That is the basis on which the merits of complaint will be determined if we have jurisdiction to consider it.

The compulsory jurisdiction

The Financial Ombudsman Service can consider a complaint under its compulsory jurisdiction if that complaint relates to an act or omission by a *firm* in the carrying on of one or more listed activities, including regulated activities (DISP2.3.1R). Positive Solutions is a *firm* under our rules.

As DISP 2.3.3G explains, "*complaints about acts or omissions include those in respect of activities for which the firm … is responsible (including business of any appointed representative or agent for which the firm … has accepted responsibility)*".

So there are two questions to be determined before I can decide whether this complaint can be considered under our compulsory jurisdiction:

1. Were the acts about which Mr R complains done in the carrying on of a regulated activity?

2. Was the principal firm, Positive Solutions responsible for those acts?

Were the acts about which Mr R complains done in the carrying on of a regulated activity?

A personal pension is an investment specified in the Regulated Activities Order (RAO). So advice to switch a personal pension to a SIPP is regulated investment advice as per Article 53 of the RAO. Shares are also specified investments. So advice to invest in the shares is also regulated investment advice. And arranging deals in the personal pensions, SIPP and shares is regulated as per Article 25 of the RAO.

Like the investigator, I am satisfied Mr S advised Mr R to switch his existing personal pensions into a SIPP, to invest in the shares of the two companies, and made arrangements for these things to happen.

I acknowledge there is not the sort of documentation you might generally expect to see where advice has been given, such as a suitability report. However, it doesn't follow that advice was not given.

It is Mr R's recollection that he was advised by Mr S. And I think that recollection is plausible. Mr R had little investment experience, and I think it unlikely that he would have thought of switching his existing pensions to invest in unlisted shares unless the idea was put to him. I also think it unlikely he would have gone ahead and made the switches, and investments, without a recommendation from Mr S – an individual Mr R had previously received financial advice from.

Mr S was also named as the financial advisor on the SIPP application form, and a box was ticked on that form to say Mr S would be making investment decisions for the SIPP, on Mr R's behalf. The application was also sent to the SIPP operator by Mr S.

Taking all of this into account, I'm satisfied that Mr S carried out the regulated activities of advising on and making arrangements for somebody to buy or sell or subscribe for a security or relevant investment.

Was the principal firm, Positive Solutions, responsible for those acts?

Actual authority

Like the investigator, I do not think there is sufficient evidence to conclude Mr S was acting with Positive Solutions' actual authority when carrying out the acts subject to complaint.

An agent is required to act in the interests of the principal. It seems Mr S is likely to have breached those terms in this case. It is difficult to see that giving advice to set up a SIPP with a provider it isn't clear was approved by Positive Solutions at the time and switch pensions to it in order to invest in a non-approved investment, where no commission or fee was passed on to Positive Solutions, was acting in the interests of the principal, Positive Solutions.

It is therefore my view that Mr S was not acting within the actual authority given to him in relation to the acts subject to complaint.

That is not however the end of the matter. There is also apparent (or ostensible) authority to consider.

Apparent authority

In an agency relationship, a principal may limit the actual authority of his agent. But if the agent acts outside of that actual authority, a principal may still be liable to third parties for the agent's acts if those acts were within the agent's apparent authority. This is the case even if the agent was acting fraudulently and in furtherance of his own interest – provided the agent is acting within his apparent authority.

This type of authority was described by Diplock LJ in *Freeman & Lockyer v Buckhurst Properties (Mangal) Ltd* [1964] 2 QB 480:

> "*An "apparent" or "ostensible" authority…is a legal relationship between the principal and the contractor created by a representation, made by the principal to the contractor, intended to be and in fact acted upon by the contractor, that the agent has authority to enter on behalf of the principal into a contract of a kind within the scope of the "apparent" authority, so as to render the principal liable to perform any obligations imposed upon him by such contract. To the relationship so created the agent is a stranger. He need not be (although he generally is) aware of the existence of the representation but he must not purport to make the agreement as principal himself. The representation, when acted upon by the contractor by entering into a contract with the agent, operates as an estoppel, preventing the principal from asserting that he is not bound by the contract. It is irrelevant whether the agent had actual authority to enter into the contract.*
>
> *In ordinary business dealings the contractor at the time of entering into the contract can in the nature of things hardly ever rely on the "actual" authority of the agent. His information as to the authority must be derived either from the principal or from the agent or from both, for they alone know what the agent's actual authority is. All that the contractor can know is what they tell him, which may or may not be true. In the ultimate analysis he relies either upon the representation of the principal, that is, apparent authority, or upon the representation of the agent, that is, warranty of authority...*"

Although Diplock LJ referred to "contractors", the law on apparent authority applies to any third party dealing with the agents of a principal – including consumers like Mr R.

What kinds of representation are capable of giving rise to apparent authority?

Apparent authority cannot arise on the basis of representations made by the agent alone. For apparent authority to operate there must be a representation by the principal that the agent has its authority to act. As Diplock LJ said in *Freeman*,

> *"The representation which creates "apparent" authority may take a variety of forms of which the commonest is representation by conduct, that is, by permitting the agent to act in some way in the conduct of the principal's business with other persons. By so doing the principal represents to anyone who becomes aware that the agent is so acting that the agent has authority to enter on behalf of the principal into contracts with other persons of the kind which an agent so acting in the conduct of his principal's business has usually "actual" authority to enter into.*"

In *Martin v Britannia Life Ltd* [1999]12 WLUK 726, Parker J quoted the relevant principle as stated in Article 74 in Bowstead and Reynolds on Agency 16th edition:

> "*Where a person, by words or conduct, represents or permits it to be represented that another person has authority to act on his behalf he is bound by the acts of that other person with respect to anyone dealing with him as an agent on the faith of any such representation, to the same extent as if such other person had the authority that he was represented to have, even though he had no such actual authority.*"

In the more recent case of *Anderson v Sense Network [*2018] EWHC 2834 Comm, Jacobs J endorsed Parker J's approach:

> "*As far as apparent authority is concerned, it is clear from the decision in* Martin *(in particular paragraph 5.3.3) that, in order to establish apparent authority, it is necessary for the claimants to establish a representation made by Sense [the alleged principal], which was intended to be acted on and which was in fact acted on by the claimants, that MFSS [the alleged agent] was authorised by Sense to give advice in connection with the scheme…*
>
> *I also agree with Sense that there is nothing in the "status" disclosure – i.e. the compulsory wording relating to the status of MFSS and Sense appearing at the foot of the stationery and elsewhere – which can be read as containing any relevant representation as to MFSS's authority to do what they were doing in this case: i.e. running the scheme and advising in relation to it. The "status" disclosure did no more than identify the regulatory status of MFSS and Sense and the relationship between them. I did not consider that the Claimants had provided any persuasive reason as to how the statements on which they relied relating to "status disclosure" could lead to the conclusion that MFSS was authorised to provide advice on the scheme that was being promoted. In my view, a case of ostensible authority requires much more than an assertion that Sense conferred a "badge of respectability" on MFSS. As* Martin *shows, it requires a representation that there was authority to give advice of the type that was given…the relevant question is whether the firm has 'knowingly or even unwittingly led a customer to believe that an appointed representative or other agent is authorised to conduct business on its behalf of a type that he is not in fact authorised to conduct'. …*
>
> *Nor is there any analogy with the facts or conclusions in* Martin*. That case was not concerned with any representation alleged to arise from "status" disclosure. In* Martin*, the representation by the principal that the agent was a financial adviser acting for an insurance company was regarded as a sufficient representation that the adviser could advise on matters (the mortgage in that case) which were ancillary to insurance products. In the present case, there is nothing in the "status disclosure" which contains any representation that MFSS or its financial advisers could operate or advise in connection with a deposit scheme that MFSS was running.*"

The representation may be general in character. In *Armagas Ltd v Mundogas SA* [1985] UKHL 11, Lord Keith said:

> "*In the commonly encountered case, the ostensible authority is general in character, arising when the principal has placed the agent in a position which in the outside world is generally regarded as carrying authority to enter into transactions of the kind in question. Ostensible general authority may also arise where the agent has had a course of dealing with a particular contractor and the principal has acquiesced in this course of dealing and honoured transactions arising out of it.*"

Must the third party rely on the representation?

The principal's representation that its agent has its authority to act on its behalf will only fix the principal with liability to the third party (here Mr R) if the third party relied on that representation.

In *Anderson*, Jacobs J summarised the approach to be taken as to whether or not there is sufficient evidence of reliance on the representation as follows:

> "*a relevant ingredient of a case based on apparent authority is reliance on the faith of the representation alleged: see Bowstead and Reynolds on Agency 21st edition, paragraph [8-010] and [8-024];* Martin *paragraph 5.3.3. In* Martin*, Jonathan Parker J. held that the relevant representation in that case (namely that the adviser was authorised to give financial advice concerning a remortgage of the property) was acted on by the plaintiffs 'in that each of them proceeded throughout on the footing that in giving advice [the adviser] was acting in every respect as the agent of [the alleged principal] with authority from [the alleged principal] so to act'.*"

On the particular facts of that case, Jacobs J placed weight on the fact the majority of the claimants had never heard of the defendant, Sense Network, and that those who had heard of it made their decision to invest in the relevant scheme before they saw the stationery which they later said contained the representation on which they relied.

As the case law makes clear, whether or not a claimant has relied on a representation is dependent on the circumstances of that individual case.

Here, I must consider whether, on the facts of this individual case:

- Positive Solutions made a representation to Mr R that Mr S had Positive Solutions' authority to act on its behalf in carrying out the activities he now complains about, and

- Mr R relied on that representation in entering into the transactions he now complains about.

Having considered the law in this area, including Lord Keith's comments in *Armagas*, so far as representations are concerned I need to decide whether Positive Solutions placed Mr S in a position which would objectively generally be regarded as carrying its authority to enter into transactions such as setting up of the SIPP to switch existing pensions to it in order to invest in the shares. Put another way, did Positive Solutions knowingly – or even unwittingly – lead Mr R to believe that Mr S was authorised to conduct business on its behalf of the type featuring in this complaint?

I also need to decide whether Mr R relied on any representation Positive Solutions made. Having considered Parker J's comments in *Martin*, if Mr R proceeded throughout on the footing that in giving advice Mr S was acting in every respect as the agent of Positive Solutions with authority from Positive Solutions so to act, then this suggests I should conclude that Mr R relied on Positive Solutions' representation.

Did Positive Solutions represent to Mr R that Mr S had the relevant authority?

Taking all of the information I have been provided with into account, I am satisfied that, in the circumstances of this complaint, Positive Solutions did represent to Mr R that Mr S had its authority to carry out the acts subject to complaint.

Mr S advised Mr R, and arranged for Mr R, to switch his four existing pensions to a SIPP, and make investments. These activities were provided for in Positive Solutions' procedures. None of these activities were in themselves novel or exceptional or unexpected for an IFA firm. These are activities that fall within the class of activities that IFAs are usually authorised to do.

Any restrictions on the authority to give certain types advice would not have been visible to Mr R. So for example he would not know that Mr S should only recommend approved investments, and should present the advice in certain ways.

Positive Solutions placed Mr S in a position which would, in the outside world, generally be regarded as having authority to carry out the acts Mr R complains about. Positive Solutions authorised Mr S to give investment advice on its behalf. Positive Solutions arranged for Mr S to appear on the FSA register in respect of Positive Solutions. And Mr S was approved to carry on the controlled function CF30 at the time of the disputed advice.

Positive Solutions held itself out as an independent financial adviser that gave advice and offered products from the whole of the market after assessing a client's needs. No information was provided to clients or potential clients about the agent being authorised in relation to approved products only.

Positive Solutions provided Mr S with Positive Solutions business stationery. Furthermore, Mr R was provided with a business card and a Positive Solutions email address, which he used when communicating with Mr S.

Positive Solutions' name and FSA details were used to set up the SIPP. Whilst it is my understanding that Mr S completed these forms (or at least submitted the completed forms to the SIPP operator) – not Positive Solutions – it was Positive Solutions that had put him in the position to do this.

It was also in Positive Solutions' interest for the general public, including Mr R, to understand that it was taking responsibility for the advice given by its financial advisers. I am satisfied that Positive Solutions intended Mr R to act on its representation that Mr S was its financial adviser. I do not see how Positive Solutions could have carried out its business activities at all if the general public had not treated registered individuals like Mr S as having authority to give investment advice on behalf of Positive Solutions.

Did Mr R rely on Positive Solutions' representation?

Mr S advised Mr R to set up a SIPP and to switch his existing personal pensions to it. Mr S also advised on the merits of buying the shares within the SIPP. Mr R has said he understood Mr S to be acting as Positive Solutions adviser when he gave that advice – and that he was reassured by this.

The SIPP application was completed with Mr S referred to as acting for Positive Solutions. And the application was sent to the SIPP operator by Mr S using Positive Solutions headed paper.

In these circumstances, it was reasonable for Mr R to think that he was getting financial advice from someone who was regulated to give such advice. Mr S wasn't regulated to give advice on his own behalf, and the FSA register showed that he was only allowed to give such advice on Positive Solutions' behalf.

I also think that it is very unlikely Mr R would have followed Mr S's advice had he been aware he didn't have the authority to act.

It is the case Mr S did not confirm the advice in a suitability report or similar, making it clear the advice was from Positive Solutions. It is however my view that the absence of these documents does not clearly establish the capacity in which the advice was given.

I cannot see that there is evidence that Mr R knew or should reasonably have known that Mr S was not acting for Positive Solutions – in accordance with its general representation that Mr S had its authority to act for it as it financial adviser - in every respect in relation to the setting up of the SIPP, the pension switches and the investments in the shares.

In my view the evidence does indicate that Mr R proceeded on the basis that Mr S was acting in every respect as the agent of Positive Solutions with authority from Positive Solutions so to act.

Is it just for Positive Solutions to be required to bear any losses caused by Mr S?

The courts have taken into account whether it is just to require a principal to bear a loss caused by the wrongdoing of his agent. I have considered whether it is just to hold Positive Solutions responsible for any detriment Mr R has suffered as result of the advice he received from Mr S. Here, I think it is just to hold Positive Solutions responsible for the consequences of its putting Mr S in the position where Mr R could suffer loss as a result of his actions. In particular, I note:

- Positive Solutions was in a position to monitor Mr S's behaviour.
- Positive Solutions did not tell Mr R it had put any of the limits on his authority that it says are relevant here.
- Positive Solutions' agency agreement acknowledges that it will be held responsible for the wrongs of its agents and includes and requires the agent to provide it with an indemnity in respect of any losses etc it suffers as result of such wrongs.

So overall I consider that it is just for Positive Solutions to be required to bear any losses caused by any wrongdoing done by Mr S whilst carrying on the a controlled function assigned to him by Positive Solutions.

Vicarious liability

The investigator took the view Positive Solutions could also be held vicariously liable for the acts subject to complaint. However, I have not considered this point here, as I am satisfied Positive Solutions is responsible for the acts subject to complaint by virtue of apparent authority.

Statutory responsibility under section 150 FSMA

The investigator also said in his view that section 150 FSMA provided an alternative route by which Positive Solutions is responsible. I have not reviewed this point here either – again because my decision is Positive Solutions is responsible for the acts subject to complaint by virtue of apparent authority.

As I have concluded the complaint is one I can consider, I will go on to consider the merits of it.

My findings as to the merits of the 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, like the investigator, I consider Mr R was given unsuitable advice – and that, if he had not been given that unsuitable advice, Mr R would not have switched from his existing personal pensions to the SIPP, and invested in the shares.

At the time of advice Mr M had a modest income, no other pensions other than the ones involved here, and no other savings. Mr S could not therefore afford to take significant risk with his pension provision. He also had very little investment experience. So the advice that he move his existing pensions to a SIPP was clearly unsuitable.

The two share investments Mr R was advised to make in his SIPP were in unlisted companies with a limited track record – so they were high risk and speculative. There was a possibility both would fail, and his investments would be lost. They were clearly not a suitable home for the entire pension of an inexperienced investor with a modest income and no other savings.

I therefore think Mr S should have concluded the switches to the SIPP to invest in the shares were not suitable, and that it was not therefore fair and reasonable for Mr S to advise Mr R to make the switches and investments.

It seems it was Mr S who approached Mr R – Mr R was not proactively looking to do anything with his pensions. So I'm satisfied that, had Mr S not advised Mr R to switch out of his existing pensions, Mr R would have kept those pensions.

Fair compensation

My aim is that Mr R should be put as closely as possible into the position he would probably now be in if he had been given suitable advice.

What should Positive Solutions do?

Positive Solutions should calculate fair compensation by comparing the current position to the position Mr R would be in if he had not switched from his existing pensions. In summary, Positive Solutions should:

1. Calculate the loss Mr R has suffered as a result of making the switches.

2. Take ownership of the shares held in the SIPP if possible.

3. Pay compensation for the loss into Mr R's pension. If that is not possible pay compensation for the loss to Mr R direct. In either case the payment should take into account necessary adjustments set out below.

4. Pay £500 for the trouble and upset caused.

5. Pay Mr R's SIPP fees for the next five years, in the event he is not now able to close his SIPP

I'll explain how Positive Solutions should carry out the calculation set out at 1-3 above in further detail below:

1. Calculate the loss Mr R has suffered as a result of making the switches

To do this, Positive Solutions should work out the likely value of Mr R's pensions as at the date of this decision, had he left them where they were instead of switching to the SIPP.

Positive Solutions should ask Mr S's former pension provider to calculate the current notional transfer value had he not switched his pensions. If there are any difficulties in obtaining a notional valuation then a benchmark of 50% of the FTSE UK Private Investors Income Total Return index and 50% of the monthly average rate for one-year fixed-rate bonds as published by the Bank of England should be used to calculate the value. That is likely to be a reasonable proxy for the type of return that could have been achieved if the pensions had not been switched.

The notional transfer value should be compared to the transfer value of the SIPP at the date of this decision and this will show the loss Mr S has suffered.

2. Take ownership of the shares

Ideally, the illiquid assets – the shares - could be removed from the SIPP. Mr R would then be able to close the SIPP, if he wishes, and avoid paying further fees for the SIPP. For calculating compensation, Positive Solutions should agree an amount with the SIPP operator as a commercial value for the shares. It should then pay the sum agreed plus any costs and take ownership of the shares.

If Positive Solutions is able to purchase the shares then the price paid to purchase the holding/s should be allowed for in the current transfer value (because it will have been paid into the SIPP to secure the holding/s).

If Positive Solutions is unable, or if there are any difficulties in buying the shares, it should give them a nil value for the purposes of calculating compensation. Provided Mr R is compensated in full Positive Solutions may ask Mr R to provide an undertaking to account to it for the net amount of any payment the SIPP may receive from the shares. That undertaking should allow for the effect of any tax and charges on the amount Mr R may receive from the investment and any eventual sums he would be able to access from the SIPP. Positive Solutions will need to meet any costs in drawing up the undertaking.

3. *Pay compensation to Mr R for loss he has suffered calculated in (1).*

Since the loss Mr R has suffered is within his pension it is right that I try to restore the value of his pension provision if that is possible. So if possible the compensation for the loss should be paid into the pension. The compensation shouldn't be paid into the pension if it would conflict with any existing protection or allowance. Payment into the pension should allow for the effect of charges and any available tax relief. This may mean the compensation should be increased to cover the charges and reduced to notionally allow for the income tax relief Mr R could claim. The notional allowance should be calculated using Mr R's marginal rate of tax.

On the other hand, Mr R may not be able to pay the compensation into a pension. If so compensation for the loss should be paid to Mr R direct. But had it been possible to pay the compensation into the pension, it would have provided a taxable income. Therefore, the compensation for the loss paid to Mr R should be reduced to notionally allow for any income tax that would otherwise have been paid. The notional allowance should be calculated using Mr R's marginal rate of tax in retirement. For example, if Mr R is likely to be a basic rate taxpayer in retirement, the notional allowance would equate to a reduction in the total amount equivalent to the current basic rate of tax. However, if Mr R would have been able to take a tax free lump sum, the notional allowance should be applied to 75% of the total amount.

4. *Pay £500 for the trouble and upset caused.*

Mr R has been caused some distress and inconvenience by the loss of his pension benefits. This is money Mr R cannot afford to lose and its loss has clearly caused him significant distress. I consider that a payment of £500 is appropriate to compensate for that distress.

5. *SIPP fees*

If Mr R is unable to close his SIPP once compensation has been paid, Positive Solutions should pay an amount into the SIPP equivalent to five years' worth of the fees (based on the most recent year's fees) that will be payable on the SIPP. I say this because Mr R would not be in the SIPP but for the unsuitable advice. So it would not be fair for him to have to pay fees to keep it open. And I am satisfied five years will allow sufficient time for things to be sorted out with the shares, and the SIPP to be closed.

interest

The compensation must be paid as set out above within 28 days of the date Positive Solutions receives notification of his acceptance of my final decision. Interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement if the compensation is not paid within 28 days.

My final decision

I uphold the complaint. My decision is that Quilter Financial Planning Solutions Limited should pay the amount calculated as set out above.

Quilter Financial Planning Solutions Limited should provide details of its calculation to Mr R in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 25 April 2021.

John Pattinson
ombudsman