DRN-3028968

## The complaint

Mr E has complained that Pi Financial Limited (trading as Money Foundations) gave him unsuitable advice to transfer two pensions into a SIPP (Self Invested Personal Pension). He says the advice was given to facilitate investment into a high-risk investment - the Optima Worldwide Group (OWG) bond

## What happened

Several firms will be mentioned in this decision. These are:

Legal Partnership (LP) - unregulated introducer
Pi Financial Ltd , trading as Money Foundations (Pi) - regulated financial adviser
Strand Capital Limited (Strand) – stockbroker
Horizon Stockbroking (HS) – discretionary investment manager
James Hay (JH) - SIPP provider

Pi say that Mr E was introduced to them by the unregulated introducer, LP. Mr E says when he re-mortgaged, he was recommended to consolidate his two existing pension plans and was put in touch with Pi.

Pi received two letters from Mr E on 9 January 2014 in relation to each of his existing two pension plans. Both letters said:

*'I would like to transfer my existing Pension Plan…. into a new Self Invested Personal Pension (SIPP) Plan. Can you arrange for my current funds…to be transferred into a SIPP with a relevant SIPP provider. I do not wish for you to choose the Investment Funds but set up the SIPP Investment only, as I wish to choose my own investment choice which may involve direct investment in Shares.'*

The adviser replied by letter dated 11 January 2014 which said:

*'Thank you for your letter of 09th January 2014 to transfer your Pension Plans from … into a new Self Invested Pension Plan (SIPP). I am happy to complete your instructions on the transfer. I will not have any input on which funds that your new SIPP will be invested in, but will only have responsibility for selecting an appropriate SIPP provider and setting up the transfer of your funds into the new SIPP.'*

The Pi advisor wrote a file note on 24 January 2014 which said:

*'The client wished to establish a SIPP because he wanted to make his own Investment choices and asked me to research the market for an appropriate provider. He specifically asked me not to comment on the suitability of the product, nor compare it to his existing scheme and only recommend a SIPP provider. To that end I was not provided with any ceding scheme documentation.*

*He is receiving investment advice from The Legal Partnership and asked me for no investment advice concerning the funds to be held within the SIPP.*

*The initial letter received from the client asking for my assistance states that he wished to make "own investment choice" but from further discussion it transpired that The Legal Partnership is assisting him with this.'*

Various documents were completed and signed on the same day, on 21 January 2014. This included

- a fact find which confirmed Mr E's circumstances at the time
- Pension Replacement Contract Forms
- Pension Transfer Analysis

A recommendation letter was issued on 24 January 2014. It recommended Mr E transfer his two pensions into a SIPP with James Hay. An accompanying letter asked Mr E to sign the report and return it.

In February 2014, Mr E's two pensions (worth around £29,000) were transferred to a SIPP with JH. The following month £20,000 was transferred from the SIPP to the stockbroker, Strand, and subsequently invested in the OWG Bond through HS..

Representatives for Mr E raised a complaint to Pi in 2019 regarding the unsuitable advice it said had been provided to him. Pi Financial didn't uphold the complaint and it was subsequently referred to us.

One of our adjudicators investigated the complaint and recommended that it should be upheld. He didn't think the advice given to Mr E had been suitable.

Pi disagreed that they should be held responsible for Mr E's losses. In 2019, they also told this service that they understood distributions from the OWG fund would be made to customers which would impact on the loss amounts and so no further action should be taken on Mr E's complaint until the level of distribution had been confirmed. In January 2020, they said they expected the distributions to happen *shortly.* The complaint was passed to me for an ombudsman's decision.

**What I've decided – and why**

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

Pi has submitted detailed submissions which I considered in full. They also submitted more comments on a similar complaint which are relevant to Mr E's complaint too, so I've taken them into account as well. However, I'll focus in this decision on what I consider to be the key material issues in deciding the fair outcome of this complaint.

Pi's position in summary is that:

- Mr E instructed Pi to recommend an appropriate SIPP provider. They only provided Mr E with a limited advice service on these specific instructions. Given the limited nature of the retainer the firm took reasonable steps to ensure that its recommendation was suitable in full compliance with COBS 9.2.1 and 9.2.2. Any liability could only be in regard to whether a SIPP was appropriate for Mr E.

- Pi didn't provide Mr E with advice on the switch from him existing pension plans to a SIPP or on the investment in OWG. Mr E had already decided what he wanted to do

before he approached Pi. And the investment forms likely would have made it clear the intended investments were high risk. They doubt additional information by Pi would have changed Mr E's course of action.

- The investment strategy for the SIPP was the responsibility of HS who was also a regulated party. Pi agreed that the OWG bond was unsuitable for Mr E, but said HS was responsible for Mr E's losses and not Pi who only played a very limited role here.

**relevant considerations**

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

The FCA's Principles for Businesses (PRIN) apply to all authorised firms including Pi. Of particular relevance to this complaint is:

PRIN 2: '*A* firm *must conduct its business with due skill, care and diligence.'*

PRIN 6*: 'A firm must pay due regard to the interests of its customers and treat them fairly'*

PRIN 9: *'A firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment'.*

In addition, where regulated investment advice is given, the more detailed Conduct of Business Sourcebook (COBS) rules apply. Of particular relevance to this complaint are:

COBS 9 which applies where a firm makes a personal recommendation in relation to designated investment.

*COBS 9.2.1(1): 'A firm must take reasonable steps to ensure that a personal recommendation, or a decision to trade, is suitable for its client'.*

*COBS 9.2.1 (2) says 'that when making a personal recommendation, a firm 'must obtain the necessary information regarding the client's:*

*(a) knowledge and experience in the investment field relevant to the specific type of designated investment or service;*
*(b) financial situation; and*
*(c) investment objectives;*

*so as to enable the firm to make the recommendation, or take the decision, which is suitable for him.'*

*COBS 9.2.2 provides:*

*'(1) A firm must obtain from the client such information as is necessary for the firm to understand the essential facts about him and have a reasonable basis for believing, giving due consideration to the nature and extent of the service provided, that the specific transaction to be recommended, or entered into in the course of managing:*

*(a) meets his investment objectives;*

*(b) is such that he is able financially to bear any related investment risks consistent with his investment objectives; and*

*(c) is such that he has the necessary experience and knowledge in order to understand the risks involved in the transaction or in the management of his portfolio.*

*(2) The information regarding the investment objectives of a client must include, where relevant, information on the length of time for which he wishes to hold the investment, his preferences regarding risk taking, his risk profile, and the purposes of the investment.*

*(3) The information regarding the financial situation of a client must include, where relevant, information on the source and extent of his regular income, his assets, including liquid assets, investments and real property, and his regular financial commitments.'*

I am also mindful of the general legal position including: the law relating to causation, foreseeability and remoteness of losses.

My considerations here are:

- Did Pi give Mr E investment advice including a personal recommendation?
- If so, was the advice suitable?
- If the advice was unsuitable I need to consider whether:
    - Mr E would have relied on the advice or whether he would have acted the same way he did irrespective of Pi's advice and
    - If Mr E did rely on Pi's advice, how fair compensation should be calculated in the specific circumstances of this case.

**advising on investments**

I have firstly considered whether, based on the facts of the complaint, Pi provided Mr E with regulated investment advice.

Regulated activities specified for the purposes of section 22 of the Financial Services and Markets Act 2000 (FSMA) were set out in the Regulated Activities Order (RAO) and included:

*'Advising on investments*

***53.** Advising a person is a specified kind of activity if the advice is—*

*(a) given to the person in his capacity as an investor or potential investor, or in his capacity as agent for an investor or a potential investor; and*

*(b) advice on the merits of his doing any of the following (whether as principal or agent)—*

*(i) buying, selling, subscribing for or underwriting a particular investment which is a security or a relevant investment, or*

*(ii) exercising any right conferred by such an investment to buy, sell, subscribe for or underwrite such an investment.'*

Part III of the RAO listed the kinds of investment which are specified for the purposes of section 22 of FSMA. This included:

*Article 82, 'Rights under a pension scheme' which at the time read.*

*(1) Rights under a stakeholder pension scheme.*
*(2) Rights under a personal pension scheme.'*

As far as I can see Pi agrees that they recommended a particular SIPP with a particular SIPP provider to Mr E. This is also clearly evidenced in the following documents:

- The research report which was issued on 21 January 2014 and prepared by Pi's adviser and which - after comparing several SIPPs and providers - recommended the James Hay Modular iSIPP for Mr E.

- The recommendation letter dated 24 January 2014 which said amongst other things:

*'**My advice** is based on the details you provided at our meeting….*

*…You instructed me to specifically limit **my advice** to Pension Planning and setting up a Self Invested Personal Pension (SIPP) with no advice received on the Investment of the SIPP. I have acted accordingly.'*

Under Objectives it said *'You wished me **to recommend** an appropriate SIPP into which you can transfer your current….pension policies.'*

Pi went onto make a specific recommendation *'After doing my research on the most appropriate provider and plan to meet your needs I **have recommended** a James Hay* Partnership *SIPP.'*

*Having undertaken appropriate research on your behalf I believe that James Hay Partnership will offer **the most suitable contract** given your stated objectives.'*

*'A copy of the research undertaken …. accompanies this letter for your consideration which outlines in greater detail the reasons **for the recommendation** of the chosen provider.' [my emphasis]*

I think it's clear from the documents that Pi recommended a particular SIPP with a particular provider which they said was suitable for Mr E. I'm satisfied that recommending a suitable SIPP provider can be considered to be 'advising' under Article 53 RAO.

I am satisfied that Pi were giving regulated advice on investments and provided a personal recommendation to Mr E when they advised on the SIPP. Therefore the obligations in COBS 9 were engaged.

**was PI entitled to rely on their 'limited retainer'?**

Pi has said they provided a limited advice service in accordance with Mr E's instructions. Mr E had specifically asked for them to recommend a SIPP product and he told them he didn't require investment advice. Pi says they didn't provide advice on the switch from Mr E's personal pension to the SIPP or where it would be invested.

The issue to determine is whether Pi was entitled to restrict their advice to the recommendation of the SIPP product only. Having considered this carefully I don't think it was fair and reasonable for them to do so.

The purpose of Pi's regulatory duties under FSMA (and COBS) is to provide consumer protection taking into account the differing risks involved in different kinds of investments, the

differing degrees of experience and expertise consumers have and the needs consumers may have for the timely provision of information and advice that is accurate and fit for purpose (Section 1B FSMA).

When recommending the SIPP, Pi needed to have a reasonable basis for believing that their recommendation would meet Mr E's objectives and that he was able to bear *any related investment risks.* Mr E's recorded objective for transferring to the SIPP was the access to a wider range of investments.

I consider the risks of Mr E transferring his existing pensions and the risks of his intended investment through the SIPP with these monies were related to the establishment of the SIPP itself. Applying COBS 9.2.2, I'm satisfied Pi couldn't simply ignore the context of why Mr E wanted a recommendation for a SIPP and what Mr E was intending to do once the SIPP was established. I consider that in order to advise on the merits of setting up a specific SIPP product, Pi needed to have regard to Mr E's wider circumstances including how his funds were currently invested and what the intended investment strategy would be. Assessing the suitability of a SIPP in isolation without considering the whole transaction is not reasonably possible. I also note that Pi knew Mr E was receiving investment advice from an unregulated party, so should have taken particular care here.

The FSA published an alert in 2013 when they became concerned that regulated financial advisers were misinterpreting the rules. The alert focussed on unregulated investments which were introduced by unregulated introducers as these held particular risks for customers. The alert said:

*'It has been brought to the FSA's attention that some financial advisers are giving advice to customers on pension transfers* ***or pension switches*** *[my emphasis] without assessing the advantages and disadvantages of investments proposed to be held within the new pension..'*

*'The FSA's view is that the provision of suitable advice generally requires consideration of the other investments held by the customer or, when advice is given on a product which is a vehicle for investment in other products (such as SIPPs and other wrappers), consideration of the suitability of the overall proposition, that is, the wrapper and the expected underlying investments in unregulated schemes.'*

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

*'For example, where a financial adviser recommends a SIPP knowing that the customer will transfer out of a current pension arrangement to release funds to invest in an overseas property investment under a SIPP, then the suitability of the overseas property investment must form part of the advice about whether the customer should transfer into the SIPP. If, taking into account the individual circumstances of the customer, the original pension product, including its underlying holdings, is more suitable for the customer, then the SIPP is not suitable'*

And it specifically referred to cases where advisers were under the false impression they could advise on the suitability of a SIPP in the abstract. In 2014 the FSA issued a further alert in which they reiterated [emphasis added]:

'*Where a financial adviser recommends a SIPP* ***knowing*** *that the customer will transfer or switch from a current pension arrangement to release funds to invest through a SIPP, then the suitability of the underlying investment must form part of the advice given to the*

*customer.* ***If the underlying investment is not suitable for the customer, then the overall advice is not suitable****.'*

*'The initial alert outlined our view that where advice is given on a product (such as a SIPP) which is intended as a wrapper or vehicle for investment in other products, provision of suitable advice generally requires consideration of the overall transaction, that is, the vehicle or wrapper and the expected underlying investments (****whether or not such investments are regulated products)****.*

*Despite the initial alert, some firms continue to operate a model where they* ***purportedly restrict their advice to the merits of the SIPP wrapper****.* '

Pi says the alert was to provide guidance where there was an '*advice gap'* and the adviser was the only regulated party in the transaction. And this wasn't the case here.

However, I think applying a narrow reading of the alert to only specific circumstances is misguided. The essence of the alert, in my view, was to remind advisers that they couldn't just advise on a SIPP in isolation, but that to comply with their regulatory obligations they needed to consider the consumer's wider circumstances and whether what they were intending to do was suitable and in their best interest. I want to be clear that I consider Pi's obligations in this regard stem from COBS 9 and the Principles. The alert just provides clarification and sets out expectations from the regulator and good industry practice. The requirements of COBS 9.2.2 don't fall away even if another regulated party is involved.

It follows that in order to give suitable advice on the SIPP Pi needed to consider Mr E's wider circumstances and the suitability of the whole transaction, i.e. the switch from a personal pension to a SIPP, the suitability of a particular SIPP product and provider and the underlying investment strategy.

I also point to COBS 2.1.2R which sets out clearly that a firm must not seek to exclude or restrict; or rely on any exclusion or restriction of any duty or liability it may have to the client under the regulatory system. So Pi couldn't limit their obligation in COBS 9 by taking instructions from Mr E to only consider the SIPP wrapper in isolation.

Pi and Mr E were in an advisory relationship where Pi was the expert and they had a duty to meet their regulatory obligations. As explained above COBS 9 required Pi do consider the wider suitability of Mr E's intended transactions when recommending a SIPP - whether he requested this or not. They failed to do this and therefore I consider they did not act fairly or reasonably when providing their advice to Mr E.

Pi Financial referred to the court case Denning v Greenhalgh Financial Services which it said considered the scope of duty of advisers. And the High Court decision - Adams v Carey Pension UK LLP, where it noted the court had considered the duty of a party performing a limited service and said the decision was relevant to Mr E's case.

With respect to the *Adams v Carey Pension UK LLP* High Court decision, that case was about an execution-only contract. The parties were a SIPP administrator and an investor. It was clear on the facts of the case that the SIPP administrator didn't act in an advisory role and it told the investor to seek independent advice elsewhere. The judge held that COBS 2.1.1 would have to therefore be construed in light of the nature of the contractual relationship which was not advisory. I think the circumstances in this complaint are significantly different. Pi didn't act on an execution-only basis. They were giving advice on the SIPP, so the regulatory obligations of COBS 9 did apply. And as explained above part of

the suitability assessment of the SIPP would have included the suitability of the pension switch and the underlying investment strategy.

I have also considered *Denning v Greenhalgh*, but it doesn't change my findings either. For the reasons I have explained, I'm satisfied that Pi gave regulated advice on the suitability of the particular SIPP. They had to comply with their regulatory obligations under COBS 9 and, in that sense, I don't think *Denning* is of value to that determination.

In summary, I consider that when advising Mr E on the suitability of the James Hay SIPP, Pi had to consider the suitability of the whole intended transaction including the pension switch and where Mr E intended to invest after the transfer.

**did Pi provide suitable advice?**

COBS 9 required Pi to take reasonable steps to provide Mr E with a suitable recommendation, so I considered whether they met this requirement.

Mr E was 59, divorced, unemployed and receiving state benefits. There is no record of savings or investments. He didn't have any investment experience beyond his two existing pension plans, which was his only recorded pension provision.

Pi said on another case where a client was introduced by LP and had invested in OWG that they did due diligence on the OWG investment. Given that the advice happened around the same time as Mr E's advice, I consider it likely Pi would have done the same for Mr E and would have known what he was about to invest in. And even if I'm wrong about this, Pi needed to establish what Mr E was intending to invest in through the SIPP in any event in order to provide a suitable recommendation.

The OWG bond was invested in loan notes which are considered relatively high-risk and are not regulated. The bond prospectus (which Pi has provided to us) confirms this:

*'The Convertible Redeemable Loan Note is an unregulated investment and the protections normally afforded by the Financial Services and Markets Act 2000 do not apply. Investors will not be entitled to compensation under the Financial Services Compensation Scheme.'*

I think it's evident from the documents Mr E completed that he didn't have the necessary experience and knowledge to understand the risks of this non-standard investment which included illiquidity risks, lack of diversification and potential loss of his retirement funds. Pi have already confirmed that they agree this was unsuitable for Mr E, so this isn't really in dispute.

Given Mr E's lack of investment experience, I'm also not persuaded he was a credible self-investor. I can't see any persuasive reasons why Mr E needed to change his pensions at all, given that his only motivation was consolidation but he only had two plans, which seem to have been invested in fairly low cost balanced, managed funds.

Based on the information I have, I'm satisfied the transfers to the SIPP and investment into OWG was unsuitable for Mr E. And Pi knew - or ought to have known - that the intended investment into OWG was too high risk and unsuitable for an inexperienced investor in Mr E's circumstances. Despite this, they recommended a SIPP which facilitated this investment.

In summary, I think Pi should not have recommended a SIPP to Mr E. They should have explained that his intended investments were too high risk and that given his limited assets, he couldn't financially bear the risks with his retirement funds.

In my view Pi were in breach of the Principles and COBS when they recommended the SIPP to Mr E. They didn't pay due regard to Mr E's interests and did not take reasonable steps to ensure that their personal recommendation was suitable for Mr E as per their regulatory obligations. Therefore I do not consider that Pi's actions in their dealings with Mr E were fair or reasonable in the circumstances.

**would Mr E have transferred his pension to a SIPP and invested in OWG anyway?**

I considered whether Mr E would have proceeded with the transaction regardless of what Pi told him. The OWG brochure detailed some of the risks of the investment and if I assume that Mr E was given this brochure - which is something I don't know - he might have been informed that this was unregulated and high risk. I also considered that LP might have influenced Mr E in the background and could have persuaded him to proceed.

However, on balance, I think explicit advice from Pi acting as a professional firm recommending him not to proceed would have carried significantly more weight than any general wording in application forms or brochures warning the investment was high risk. Mr E had no real investment experience so I'm not convinced he would have been able to properly understand the risks he was taking with his entire pension here.

Given that Pi knew that there was risk Mr E was being influenced by LP and potentially not given full and clear information about what he was about to do, they should have established what he had been told and correct any potential misconceptions.

The consequences of the loss of the pension were of great significance to Mr E's overall financial position. He didn't have the capacity to bear significant losses to his pension, which was a real possibility with the investment in the OWG bond. So I think on balance if Pi, as a regulated adviser and independent third party, had clearly explained they couldn't recommend the SIPP as the intended investments were not suitable for his circumstances, the transaction wasn't in his best interest and he couldn't afford to risk his pension in this way, I think he would have decided not to proceed.

If LP had tried to persuade him to transfer anyway, Mr E would have faced a choice between taking the advice of the unregulated introducer or the authorised firm. I'm not persuaded the evidence suggests Mr E was so strongly motivated to make the transaction that he would have decided to press ahead with it against professional expert advice.

For the reasons I have given above, I'm satisfied that Mr E would have more likely than not followed Pi's advice if they had explained the position in full and recommended against the SIPP and investment with OWG as it was unsuitable for him.

**reliance on another regulated party: COBS 2.4.4**

Pi also said COBS 2.4.4 should be considered. They say they were entitled to rely on Horizon providing a suitable recommendation for Mr E. Pi doesn't accept that there was a regulatory obligation for them to assess the investment in detail and certainly not to the extent that would be expected from someone who recommended the investment.

Firstly, I don't consider that COBS 2.4.4. applies here. The rule broadly says where a firm (F1) receives an instruction from another regulated firm (F2) to carry out a regulated activity on behalf of a client, F1 can rely on assessments or information provided to it by F2. Pi suggests in these particular circumstances they were F1 and HS were F2. However, Pi didn't receive any instructions here from HS.

There was no need for Pi to assess the investment in encompassing detail. But they needed to have sufficient understanding of what Mr E would be invested in. If they had done so, they would have known his intended investment in OWG was high risk and unsuitable for him.

So in any event, even if COBS 2.4.4. applied, I can't see how Pi could reasonably rely on HS providing Mr E with a suitable investment, when they knew or ought to have known he was about to invest into an unsuitable product.

**fair compensation**

I have found that Pi gave Mr E unsuitable advice and if it wasn't for their advice, Mr E more likely than not would have not proceeded with the switch to a SIPP. Having considered all the evidence and arguments, I consider it fair that Pi compensates Mr E for any losses he suffered by transferring into the SIPP and investing into OWG.

Pi says it can't be required to pay compensation which is outside of its legal scope of responsibility and which is too remote to be recoverable as a matter of law. It referred to SAAMCO v York Montague Ltd [1997] and BPE Solicitors v Hughes-Holland [2018].

Pi's scope of duty was to take reasonable steps to give a suitable recommendation. This included understanding Mr E's knowledge and experience, objectives and financial situation. Part of this duty was the consideration of the pension switch and the underlying investment in the SIPP as explained above.

Pi breached their regulatory duties when they recommended a SIPP although the intended investment was evidently unsuitable for Mr E. For the reasons I have given earlier in the decision, I think Mr E wouldn't have been in the SIPP or OWG bond investment at all if Pi had met its obligations under COBS and PRIN. And consequently he wouldn't have suffered the investment losses he did. I therefore consider the losses Mr E suffered from the high-risk investment are related to Pi's unsuitable advice.

I recognise that HS also had regulatory obligations and it's possible that their actions may have also separately caused some of Mr E's loss. However, I can't consider a complaint against HS as they are in default. And in the circumstances of this case I think it's reasonable to award fair compensation against Pi.

This is because I'm putting Mr E as far as possible in the financial position he would be in but for Pi's unsuitable advice. Mr E wouldn't have lost out at all but for Pi's failings to take reasonable steps to ensure their advice was suitable and Pi benefitted financially [in their role as independent financial advisors] from advising on this unsuitable transaction. So I consider it fair that Pi should compensate Mr E. I think apportioning responsibility to Pi for the whole of the loss represents fair compensation in this case.

In my view Mr E 's losses flowed from PI's failures in regard to COBS and PRIN as I have described. In all the circumstances, I'm satisfied it fair compensation that Pi compensates Mr G for the losses he suffered by transferring his pension into a SIPP and from there into high-risk investments.

It's unclear when and if OWG will distribute any funds to customers. It's been nearly two years since Pi said distributions would be made. So in the circumstances I think it's fair for Pi to compensate Mr E now. I've included ways to ensure Mr E is not overcompensated in the redress below.

**putting things right**

In awarding fair compensation for Mr E's losses my aim is to put him as close as possible to the position he would probably now be in if he had been given suitable advice by Pi.

I think Mr E would have invested differently. It's not possible to say *precisely* what he would have done. He might have remained in his existing plan or possibly consolidated them in a different plan. I'm satisfied that what I've set out below is fair and reasonable given Mr E's circumstances when he invested.

To compensate Mr E fairly, Pi must:

Compare the performance of Mr E's investment with that of the benchmark shown. If the *fair value* is greater than the *actual value*, there is a loss and compensation is payable. If the *actual value* is greater than the *fair value*, no compensation is payable.
Pi should add interest as set out below.

If there is a loss, Pi should pay into Mr E'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 Pi is unable to pay the compensation into Mr E'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 E's actual or expected marginal rate of tax at his selected retirement age. Given that Mr E would have been able to take 25% tax free cash, this deduction should only apply to 75% of the compensation.

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

| investment name | status | benchmark | from ("start date") | to ("end date") | additional interest |
|---|---|---|---|---|---|
| SIPP | still exists, but illiquid | FTSE UK Private Investors Income Total Return Index | date of transfer | date of my final decision | 8% simple per year from date of 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.

I understand Mr E's OWG investment is illiquid, meaning it can't be readily sold on the open market. This means it can be complicated to establish the actual value. So, the actual value should be assumed to be nil to arrive at fair compensation. Pi should take ownership of the illiquid investment by paying a commercial value acceptable to the pension provider. This amount should be deducted from the compensation and the balance paid as I set out above.

If Pi is unable to purchase the investment the actual value should be assumed to be nil for the purpose of calculation. Pi Financial may require that Mr E provides an undertaking to pay Pi any amount he may receive from the investment in the future. That undertaking must allow for any tax and charges that would be incurred on drawing the receipt from the pension plan. Pi will need to meet any costs in drawing up the undertaking.

Mr E has received a compensation payment of £315.60 into his SIPP from the Financial Services Compensation Scheme (FSCS) after the liquidation of Strand. This was to account for a remaining cash amount which was held by them. This payment will be included in the value of the SIPP, so no further adjustment is needed to account for this.

***Fair value***

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

Any additional sum that Mr E paid into the investment should be added to the *fair value* calculation at the point it was actually paid in.

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 Pi 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:

- The Pension Replacement form suggests Mr E's existing pensions were invested in a balanced risk profile which seems appropriate in his circumstances

- 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 E's circumstances and risk attitude.

The SIPP only exists because of the illiquid investment. In order for the SIPP to be closed and further SIPP fees to be prevented, the investment needs to be removed from the SIPP. I've set out above how this might be achieved by Pi taking over the investment, or this is something that Mr E can discuss with JH directly. But I don't know how long that will take. Third parties are involved and we don't have the power to tell them what to do. To provide certainty to all parties, I think it's fair that Pi pay Mr E an upfront lump sum equivalent to five years' worth of SIPP fees (calculated using the previous year's fees). This should provide a reasonable period for the parties to arrange for the SIPP to be closed.

In addition, Pi should pay Mr E £300 for the distress he suffered when he realised he had lost significant parts of his pension and could not access the rest.

Details of the calculations should be provided to Mr E in a clear and simple format.

**My final decision**

I uphold this complaint and require Pi Financial Ltd to pay Mr E compensation as set out above. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 1 November 2021.
Nina Walter
**Ombudsman**