

## The complaint

Mr S complains about the acts and advice of Ms L in the switch of his personal pensions to a Self-Invested Personal Pension (SIPP) to purchase commercial property belonging to his business. The purchase didn't proceed and he thinks his pension has lost value and incurred unnecessary fees as a result. Ms L was connected to Policy Services Limited (PSL) from 2018 onwards and Mr S thinks that PSL is therefore responsible.

## What happened

Ms L worked as an adviser at Sanlam. In 2016, Mr S was looking to purchase his business's commercial property with his pension. Ms L advised Mr S to consolidate his three personal pensions into one Sanlam personal pension. It appears that this advice was on the basis that Mr S might make the property purchase at some later point in time via a SIPP, but that it was a good idea to bring all his pensions together until that time.

I understand the switch was completed a short time later although I don't have all the details for this. As part of the switch, there was an ongoing service advice charge of 0.55% from Mr S's fund value.

Ms L then left Sanlam and moved to St James' Place (SJP) in July 2018. As SJP advisers can't advise on non-SJP products (such as Sanlam products), Ms L also signed an agreement with PSL. Broadly, the agreement allowed Ms L to continue to provide an "ongoing service" and receive fees (via PSL) from legacy advice conducted as a Sanlam adviser that she and her clients assigned to PSL. But the agreement set out that Ms L could not give *advice* on behalf of PSL and would need to refer clients back to PSL if advice was required by a client.

It seems that this eventually led to Mr S formally signing an agreement in July 2019 with PSL for the ongoing service being provided by Ms L. But PSL says that it took over servicing of Mr S's plans earlier - from July 2018.

Mr S says he was advised by Ms L in 2019 to switch his pensions to a Sanlam SIPP to facilitate the property purchase first discussed in 2016. The application documents are dated March and May 2019 and the adviser is noted as being Ms L. Ms L gives her firm details on the forms as those of PSL. Ms L also says of the commission arrangements on one of the forms:

*"Rather than advice fee, I am looking to take an ad hoc fee of £6,000 in total and an ongoing fee as per suitability report"*

The property purchase did not complete. The reasons for this appear to be a combination of a refusal by Sanlam SIPP to purchase the property and difficulties with the freeholder.

Because of the failure to acquire the property and the losses he said he suffered by not receiving suitable advice, Mr S complained to a number of the regulated parties associated with Ms L:

- His complaint against Sanlam was upheld when it was referred to our service. It was decided that Ms L's advice in 2016 was not suitable and that Sanlam should compensate Mr S for his losses arising from that advice – up to July 2018 when Ms L moved to SJP and PSL. I understand that compensation has been paid to Mr S and that complaint has been closed.
- His complaint against SJP was held to be not one that we could consider under our jurisdiction rules. It was decided that after Ms L moved to SJP in 2018, SJP had not authorised Ms L to give advice on non-SJP products. So, if she'd given any advice about the Sanlam pensions, that wasn't something that SJP was responsible for. That complaint is also closed.
- This decision deals with Mr S's complaint about Ms L's association with PSL. PSL's response to the complaint was that its role was to provide information and correspondence to Ms L in order for her to provide an ongoing service to Mr S. But it was not responsible for any advice she'd given in her previous role as a Sanlam adviser or any other advice she may have later given.

However, it did agree to refund Mr S for a £3,000 fee that had been taken from his policy in error.

One of our investigators looked at the PSL complaint and decided that we had jurisdiction to consider one aspect of it, but not all of it. He said that PSL was not responsible (and so we did not have jurisdiction) for the advice Ms L had given before she joined PSL in 2018. He also said that although Ms L had filled out the application documents in 2019 purporting to be a PSL adviser, she was not authorised by PSL to give any investment advice or arrangements and therefore it was not responsible for the advice in 2019 either.

However, he said that PSL had obligations to Mr S as the servicing agent for the pensions. This was something that we did have jurisdiction to consider. But having looked at the evidence, he didn't think PSL had done anything wrong. He said that Mr S's pension was invested in cash pending the resolution of the issue relating to the property purchase and this and the charges were causing Mr S's pension to suffer a comparative loss – but this wasn't something that PSL had advised on. That strategy had been set up by Ms L whilst working for Sanlam. Furthermore, Mr S could have asked PSL to undertake a review and provide advice – but didn't do so. So, overall, the investigator thought that PSL's offer to refund the £3,000 fees taken in error was fair and he didn't think PSL should pay any further compensation.

Mr S didn't agree and so the matter was passed to me to decide.

I issued a provisional decision on 13 November 2023 setting out that part of the complaint was in jurisdiction and should be upheld.

PSL did not dispute my findings.

Mr S asked me to consider the fact that he'd been advised to take a loan out too as part of the overall transaction. This matter has not been dealt with before and so we'd need to consider that as a separate complaint and I don't deal with it in this decision. Mr S should provide further details if he wants us to look into this. However I don't think it should hold up the resolution of this matter. Mr S should also note the limits of what PSL (and other parties)

can be held responsible for – he has a better idea of this now based on the complaints he’s already made and the answers he’s received from our service.

Given the above, my decision below remains the same as my provisional decision.

### **What I’ve decided - jurisdiction**

I’ve considered all the evidence that’s been provided. Having done so, I’m satisfied this complaint is one that the Financial Ombudsman Service has jurisdiction to consider.

This service can’t look at all complaints. Our ability to consider complaints is set out in Chapter 2 (DISP 2) of the Financial Conduct Authority’s Handbook.

There are essentially three aspects of the complaint – even though they all form part of the alleged failure to appropriately advise and implement the same overriding objective for Mr S: the purchase of the commercial property using Mr S’s pension.

1. The original advice in 2016 to switch to the Sanlam personal pension.
2. The advice to switch to the Sanlam SIPP in 2019.
3. The failure between 2016-2021 to appropriately advise and provide a service to Mr S.

DISP 2.3.1R says we can:

*“consider a complaint under the Compulsory Jurisdiction if it relates to an act or omission by a firm in carrying on...regulated activities...or any ancillary activities, including advice, carried on by the firm in connection with them.”*

Guidance for this rule at DISP 2.3.3G says that:

*“complaints about acts or omissions include those in respect of activities for which the firm...is responsible, to the same extent as if he had expressly permitted it, for anything done or omitted by the representative in carrying on the business for which he has accepted responsibility.”*

Looking at DISP, point 1. above can be dealt with quite briefly. Ms L wasn’t associated with PSL at the time of the advice. She was a Sanlam adviser until July 2018. Sanlam has compensated Mr S for losses he sustained between 2016 and 2018 as a result of this advice. And this is not a matter that PSL has any liability for because it was not business conducted by one of its representatives or that it had otherwise accepted responsibility for. As such, we don’t have jurisdiction to consider a complaint against PSL for the advice in 2016.

Point 2 is also not a matter that we have jurisdiction to consider against PSL. Although Ms L was a PSL “introducer” from July 2018 onwards and appears to have used PSL’s details in completing Mr S’s SIPP application, she was not authorised by PSL to give investment advice or make investment arrangements on its behalf. So, any advice and arrangements made for the SIPP by Ms L in 2019 is not business for which PSL accepted responsibility for.

I should point out that there may be other jurisdiction barriers to our consideration of point 2 as it relates directly to advice about the use of Mr S’s pension for the commercial property purchase belonging to his business – which means Mr S may not be a “consumer” under our rules. But I haven’t covered this because of the finding in the previous paragraph.

Point 3 is a matter we have jurisdiction to consider. It is a general matter rather than one directly relating to the commercial property purchase. PSL accepts that it took on responsibility for servicing Mr S's pension from the time Ms L left Sanlam in July 2018. There is no dispute that PSL was conducting a regulated activity as a result of the "ongoing service" for Mr S in the period after July 2018. Therefore, I'm satisfied that we do have jurisdiction to consider the role of PSL in any losses sustained by Mr S from that period until 2021 when Mr S appears to have cut ties with Ms L and PSL.

### **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.

The agreement between PSL and Mr S wasn't completed until July 2019 but, as mentioned, PSL says it took over servicing of his pension from July 2018. Having looked at the agreement, I think it's clear in setting out that further investment advice would only be provided if Mr S required it and Ms L wasn't able to offer a SJP product in her role as a SJP adviser:

*"[PSL] will not provide an ongoing assessment of suitability of your policies or plans as part of the Ongoing Service except if we are appointed as your agent in respect of discretionary fund management (DFM) services - see the Discretionary Fund Management section. We will notify you in writing if those terms apply to you. However, you can request further information or advice from us at any time. Details of the charges for advice are in the Advice Tariff section of this document."*

In the circumstances, I don't think PSL was required or instructed to advise Mr S about whether he should switch his investment funds.

The agreement between PSL and Mr S did however set out that, in return for an annual fee of 1% of his fund value, PSL would provide:

- a full comprehensive valuation report once a year;
- a valuation report 6 months after the comprehensive report;
- and that, via Ms L, PSL would provide an ongoing service review twice a year. The definition of this was as follows:

*"Your Partner [i.e. Ms L] will contact you to arrange an Ongoing Servicing Review either face to face, on-line or by telephone at the frequency stated in line with your selected Servicing Level. [PSL] will produce a Portfolio Valuation Report or Valuation Summary as part of the Ongoing Servicing in line with your Servicing Level. Your Partner can discuss this information, relating to your policies or plans, with you and answer any questions."*

The agreement also set out that:

#### **Levels of Ongoing Service**

*As mentioned earlier we respect the relationship you have with your Partner.*

*We have a contractual agreement with Your Partner and, should you decide to agree to our Ongoing Services, we will provide you and your Partner with up to date information on your Non-SJP policies or plans.*

*Your Ongoing Servicing Reviews will be delivered by your Partner **on behalf of Policy Services**. The frequency and timing of these Ongoing Servicing Reviews will be agreed with Your Partner and will be designed to suit your personal and financial circumstances (the options are in the Ongoing Service Costs table below).*

*At your Ongoing Servicing Reviews with your Partner you can discuss the performance of your Non-SJP policies or plans (they can of course discuss your SJP Plans at the same time).*

*The Ongoing Servicing Review may be provided via a face to face meeting with your Partner, online, or by telephone, in line with the agreed Ongoing Service Level. If you need advice on your Non-SJP policies or plans, your Partner will refer you to Policy Services.*

*We understand that all clients do not have the same Ongoing Service requirements. You are free to choose the level of Ongoing Service that best suits your needs. It is important, however, that you discuss this with your Partner or Policy Services if you are uncertain which service level is right for you considering your needs and the level of fees being paid.*

*(Remember the adviser fees or commission already being paid under your non-SJP policies or plans will go towards, or cover the fees set out in the Service Level Table below. Therefore, if you are currently being charged 1% under your existing policies or plans it would follow that Servicing Level 1 would be your most likely selection).*

*Please note your Partner or adviser will receive a proportion of the fees payable by you for the delivery of your Ongoing Service.*

Mr S's selected servicing level was "Level 1" – the most expensive and comprehensive service offered by PSL.

When I asked PSL what service it *actually* provided to Mr S, it didn't confirm whether it had provided the "comprehensive valuation" or 6 month valuation reports. It may well have done. But in respect of the ongoing review service, it said that Ms L attended eight meetings with Mr S between 2018 and 2021. And PSL provided an email from Ms L that said:

*"This is all of the correspondence from when I moved to SJP and [PSL] in June 18 to when the property purchase fell through and I was a point of contact to aid the client from a service perspective to purchase the business premises he wanted to purchase. After this didn't complete with the client I couldn't get hold of them for a meeting to discuss how to move forward and if an alternative needed to be considered due to him being out of the market/funds **therefore I had intended to review plans and consider a move to an SJP retirement account or refer backed for advice to policy services but this was not possible as [Mr S and his wife] would not return calls, emails...**"*

PSL explained that:

*"The clients were entitled to annual review of their policies. As we have demonstrated [Ms L] met the clients regularly to discuss their position/plans. In addition to the meetings, there were also regular telephone calls and emails. **It was not possible to carry out the 'traditional' review' (as detailed in our client proposition)** as the policy set up had not yet been completed however [Ms L] had substantial communications with the clients which we feel would justify the fees being received.*

*The application process eventually came to a halt as Sanlam and [the freeholder] could not come to an agreement."*

(my emphasis in bold)

Mr S can't remember if and how many meetings took place with Ms L. But whether or not they took place, it doesn't look like any kind of *review* of Mr S's pension happened. PSL's and Ms L's evidence is that they did not. Instead, the meetings that took place appear to have focused on the narrow issue of resolving issues with the commercial property to allow it to be purchased by Mr S's pension.

PSL has said that it didn't provide the "traditional review" (which I've understood to mean Ongoing Service Review) because of the circumstances involved in Mr S's case and the difficulties with the commercial property. But it knew this or ought to have known about this when it took on the servicing rights to Mr S's pension in July 2018. Despite this, it agreed to offer the ongoing review service and received fees for this.

In total PSL received over £6,500 in fees from July 2018 to February 2021. PSL accepts that £3,000 was received in error and has offered to repay this. But the question I must deal with is whether PSL treated Mr S fairly in respect of the remainder of the fees it took from Mr S for the service it agreed to provide.

The regulator has issued a factsheet on ongoing fees which I've shared with PSL which says, "*You must ensure you have robust systems and controls in place to make sure your clients receive the ongoing service you have committed to*". So, in situations like this, the emphasis is on the business actually providing (not just offering to provide) the service and the consumer receiving it. It is not enough to invite the consumer for reviews (or even fail to do that), but then still apply the charges.

I'm aware that PSL's agreement with Mr S said that Ms L would be the principal contact and would agree the ongoing service requirements. So, it's possible that Ms L might have orally agreed to do something different than set out in writing in the PSL agreement. But, I don't think that's likely. Instead I think it's more likely that Ms L intended for the ongoing fee arrangements to continue as per what she'd agreed with Mr S as a Sanlam adviser. I say this because her notes in the SIPP application in 2019 said:

*"I am looking to take an ad hoc fee of £6,000 in total and **an ongoing fee as per suitability report**".* (my emphasis)

The original suitability report with Sanlam said that the ongoing advice fee would be payable for an annual review service that included an "advisory review" – all for 0.55%. I don't think it likely that Ms L would have told Mr S that he would be charged more by PSL (1%) for a lesser service because of issues with the commercial property.

Taking this all into account, I think PSL had a duty to provide the ongoing review service it agreed to provide to Mr S. I'm not persuaded it provided this service to the extent it said it would or at all. It likely knew there were issues that meant that Mr S was in an unusual situation where he was trying to implement a difficult property purchase via his pension. In those circumstances, it should not have charged him for a service it wasn't and couldn't provide.

As such, I think it would be fair and reasonable for PSL to refund Mr S all the fees he paid.

## Putting things right

PSL shouldn't have taken the fees it charged Mr S from his pension.

If PSL hadn't deducted the fees (including the £3,000 PSL accepts it deducted in error), then the money would have remained invested in Mr S's pension. So it would be fair for PSL to ask Mr S's pension provider (Sanlam – or his current pension provider if he has since switched) to calculate the current notional transfer values had he not incurred the fees. If there are any difficulties in obtaining a notional valuation, then a benchmark of the FTSE UK Private Investors Income Total Return Index for half the fees and for the other half the average rate from fixed rate bonds should be used to calculate the value. That is likely to be a reasonable and practical proxy.

I understand that PSL have said it would be easier to follow the benchmark method – that is acceptable.

Any additional sum that Mr S paid into the pension should be added to the notional transfer value calculation proportionately at the point it was actually paid in.

Any withdrawal, income or other distributions paid out of the pension should be deducted proportionately from the fair value calculations 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 PSL totals all those payments and deducts that figure at the end.

Since the loss Mr S has suffered is within his pension, it's right that I try to restore the value of his pension provision if that's possible. So, if possible, the compensation for the loss should be paid into Mr S's pension plan if it still exists. 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 S could claim. The notional allowance should be calculated using Mr S's marginal rate of tax.

If it's not possible to pay the compensation into Mr S's pension, the compensation should be paid to Mr S 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 S should be reduced to notionally allow for any income tax that would otherwise have been paid. It's reasonable to assume that Mr S is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, as Mr S would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15% current basic rate of tax.

PSL should also pay Mr S £150 for the distress and inconvenience this matter has caused him – which has exacerbated an already difficult time for him with regard to his pension provision.

PSL should pay fair compensation as set out above within 28 days of being notified that Mr S has accepted my decision. If it doesn't, interest on the compensation due is to be paid from the date of the decision to the date of payment at the rate of 8% simple interest per year. PSL should pay this interest directly to Mr S. Income tax may be payable on any interest paid. If PSL deducts income tax from the interest, it should tell Mr S how much has been taken off. PSL should give Mr S a tax deduction certificate in respect of interest if Mr S

asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

### **My final decision**

I uphold that part Mr S's complaint that we have jurisdiction to consider. Policy Services Limited should pay Mr S the compensation set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 2 January 2024.

Abdul Hafez  
**Ombudsman**