DRN-4506055

The complaint

Mr T complains that Future Wealth Management (FWM) an appointed representative of Pi Financial Ltd (Pi), gave him unsuitable advice to switch his pensions to a Self-invested Personal Pension (SIPP) and invest with a discretionary fund manager (DFM).

What happened

In 2017 Mr T met with an unregulated introducer to FWM who I'll refer to as DG.

DG carried out a fact find to record Mr T's circumstances at the time, risk profile and investment experience. It's recorded that;

- Mr T was aged 60, employed and earning around £24,500 a year. He had around £500 in savings.
- He had an attitude to investment risk of 'high medium'.
- Mr T had three personal pensions with L&G. He also had a pension with B&CE valued at £755 providing a lump sum benefit of £4,555 at age 60 or £5,423 at age 65.

On 27 October 2017 L&G sent FWM information about the fund values of the pensions Mr T held with them. Mr T had a free-standing additional voluntary contribution (FSAVC) pension valued at £24,288.56 and a personal pension valued at £45,050.44. Mr T was contributing £50 a month to the FSAVC.

A suitability report written on FWM headed paper was produced and sent to Mr T in November 2017. It recommended a transfer of his L&G pensions to a SIPP with London & Colonial (L&C).

It was not recommended that Mr T transfer his B&CE pension however the recommendation report noted Mr T had decided to include the B&CE pension in the transfer.

The report went on to recommend an investment with a DFM – SVS Securities – in their Income Model Portfolio.

The suitability report noted Mr T had the following objectives which formed the basis for recommending the transfer. These were:

- He wished to consolidate all his plans under one arrangement with a wider range of investment options.
- He wanted greater fund choice and flexibility.
- He wanted to be able to leave his funds to his wife in the event of his death.
- He was unhappy with the service he'd received from his existing scheme and wasn't satisfied with the growth of his pensions.

Mr T accepted the recommendation. Application forms for the SIPP and investment were submitted and the transfer was completed in November 2017. The amount transferred was £69,849.00.

On 19 January 2018, £66,937.24 was transferred to SVS to be invested.

In July 2019 Mr T made an uncrystallised Funds Pension Lump Sum (UFPLS) withdrawal of £35,250. SVS Securities was placed in Special Administration on 5 August 2019 and its client book was acquired by ITI Capital in June 2020.

Mr T complained to Pi. He said that he'd been unsuitably advised by PI to transfer his pensions into a SIPP and invest with SVS. He said he'd suffered a financial loss as a result.

Pi said neither FWM nor Pi had given the advice Mr T was complaining about. They said the evidence demonstrated that the advice was given by the unregulated introducer – DG – and as such they said they weren't responsible for the impact of that advice. They also said Mr T's losses were as a result of SVS's actions.

Mr T brought his complaint to our Service.

Our investigator looked into things and concluded that the advice was given by Pi. But the advice to invest in SVS securities was unsuitable and so, they asked Pi to put things right.

Pi didn't think our Service had the authority to look into the complaint as they maintained that Mr T wasn't their customer regarding the advice he complained about. Pi provided detailed submissions in support of their arguments. In summary they said the advice was given solely by DG without the knowledge or the authority of FWM. They say DG was acting in an unregulated capacity and didn't have any agreement with Pi to provide advice. So, they say they aren't responsible for this advice that was given by DG.

I sent a provisional decision on this complaint to both parties. In it, I explained that I thought Pi were responsible for the advice Mr T was given and so the complaint was in our Service's jurisdiction. I also thought the advice was unsuitable for Mr T's circumstances, so I said I was minded to uphold the complaint and direct Pi to compensate Mr T.

Mr T hasn't provided any further submissions for me to consider.

Pi sent a detailed response to my provisional decision covering several subjects, which I'll summarise as;

- DG was not authorised by the FCA and was committing fraud by providing unregulated advice. DG presented himself to be a chartered financial planner – deliberately and fraudulently holding himself to be something he wasn't. The advice Mr T is complaining about was given by DG and he had never met the adviser at FWM who I'll refer to as HY.

- Applying *Anderson & others v Sense Network* Pi was able to appoint DG as an introducer to FWM and limit the scope of his activities. As DG acted outside of the scope of his agreement, Pi aren't responsible for his actions. It was DG who gave advice, Mr T isn't a client of Pi's and so, this complaint falls outside our Service's jurisdiction.

- HY wasn't in the UK between November 2017 and the end of February 2018. Between March and mid-July 2018 HY was also out of the country at various points.

- Pi believe the transaction occurred due to fraudulent activities of DG and FWM's administrator and therefore they aren't responsible for the advice given to Mr T.

- This complaint relates to a pension 'transfer' and not a pension 'switch'. The 2009 checklist only applied to pension switches and there are more recent FCA alerts of relevance. Such as one in 2014 which says firms must not consider the suitability of a pension transfer alone but must also consider the suitability of the underlying investment.

- Notwithstanding any of the other arguments, the advice given to Mr T was suitable. Problems with the investment in SVS could not have been foreseen when the advice was given and only arose months afterwards. So, at the time of the advice the investment in SVS was suitable. Mr T's losses stemmed from SVS changing the composition of funds in their model portfolios which could not have been foreseen when the advice was given to Mr T.

- A SIPP met Mr T's objectives as he had the willingness to take some risk to achieve higher returns. whereas a stakeholder plan, with a default low-risk investment fund with limited options wouldn't have. If the FCA's 2014 alert was applied it would have demonstrated that the costs were justified by the benefits of transferring.

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 have provided a detailed submission in response to my provisional decision which I can confirm I've read and considered in its entirety.

My decision focuses on what I think are the key issues. Our rules allow me to do this, and it simply reflects the fact that our Service exists as an alternative to the courts to resolve complaints with the least formality. So, I trust that Pi will not take the fact that my findings focus on what I consider are the central issues as a discourtesy.

Our jurisdiction over this complaint

In deciding whether our Service has jurisdiction to consider this complaint it's important to note that there are several parties involved. Pi had a professional introducers agreement with DG to introduce clients to FWM. Pi separately had an appointed representative agreement with FWM.

A complaint falls into our Service's jurisdiction if it relates to an act or omission by a firm carrying out regulated activities. This also includes activities for which the firm is responsible (including the business of any appointed representative or agent for which the firm have accepted responsibility) [DISP 2.3].

Pi have referenced case law in *Anderson v Sense Network*. I've considered the application of this case in Mr T's complaint. Specifically, Pi have argued that they were able to limit the scope of activities of DG for which they were responsible. And their agreement with him meant they weren't responsible for any unlawful actions he took.

Pi say DG acted fraudulently when he supplied clients with a business card stating he was a 'Chartered Financial Planner'. The Chartered Insurance Institute (CII) allow their members to use certain designations dependant on their qualifications and active membership of the CII. It isn't directly linked to individuals being regulated by the FCA. So, DG was able to use the

designation of ‘Chartered Financial Planner’ if he held the relevant qualifications and was an active member of the CII.

A recent search of CII’s database shows DG as holding the designation of Chartered Financial Planner. While I can’t be certain that was also the case in 2018, I haven’t seen any evidence that persuades me DG wasn’t chartered at that time. So, I think it’s unlikely DG was presenting himself as something he wasn’t as Pi suggest. DG’s business card didn’t say he was regulated or portray himself as an adviser for FWM or Pi.

Pi also maintain that the evidence shows the advice was given solely by DG who wasn’t authorised by them to provide advice under their agreement with him or FWM. So, they can’t be held responsible for the advice given by DG as he was acting outside of his introducer’s agreement.

To be clear, I’m not solely looking at the actions of DG and whether his actions went beyond the scope of his agreement. It was FWM (and not DG) who were the appointed representatives of Pi. I’m not intending to hold Pi responsible for the actions of DG.

FWM had an appointed representative agreement with Pi to provide regulated services to consumers. The same principles in *Anderson v Sense Network* apply here. Pi’s responsibilities over the activities of FWM aren’t limited to the activities Pi were authorised to do, but they’re determined by considering the terms of the contract between Pi and FWM – the appointed representative agreement.

There’s been no dispute that Pi’s agreement with FWM meant they were able to provide regulated advice and bring about deals in investments. And so, the ultimate responsibility for those regulated activities that FWM performed would fall to Pi.

My decision, therefore, focuses mainly on the actions of FWM. That’s deliberate, as I’m looking at whether or not FWM performed any regulated activities for Mr T, under their appointed representative’s agreement with Pi, which would fall under our Service’s jurisdiction.

I’ve listened to Mr T’s testimony in his phone call with Pi in full. It’s not disputed by either side that Mr T never met or directly spoke with HY. So, I accept that HY never met Mr T or spoke directly to him.

There’s also no dispute that it was DG who met with Mr T and completed the fact-find documentation and some of the other paperwork.

I’ve thought carefully about all of the evidence before me along with the arguments that Pi has made. Taking everything into account, I’m satisfied it’s most likely that FWM advised Mr T to switch his pensions and brought about the investment into SVS Securities. In the circumstances here, there are several things that satisfy me it’s most likely FWM who performed regulated activities for Mr T:

- Mr T signed a ‘Client agreement’ with FWM on 05 October 2017.
- A ‘Client Fact Find’ recorded on FWM headed paper was completed and signed by Mr T on 5 October 2017.
- Mr T was provided with a Defaqto research report on the proposed SIPP. At the footer of each page, it noted ‘Research report prepared by [HY – the director of FWM] using Defaqto Engage’.

- Following the fact find, it was FWM that L&G wrote to, providing all the information about Mr T's policies. The figures contained in the letter sent to FWM match those later used in the suitability report.

- A Pi financial 'Pension replacement contract form' detailing the proposed transfer for each of Mr T's personal pensions to L&C was completed and signed by Mr T on 19 November 2017.

- On 1 December 2017 Mr T received an email from L&C saying *'We have recently received an application for a London & Colonial SIPP, which has been completed and submitted on your behalf by Mr [HY] ([HY])@Futurewealthmanagement.com) from Pi Financial Limited'*. HY was also copied into the email on his FWM email address.

- The welcome letter from L&C notes FWM as being Mr T's 'Adviser firm'. And notes 'Initial Adviser Charges' as 3.25% which is consistent with the client agreement Mr T held with FWM.

- Both Pi and the SIPP provider have confirmed the initial advice fees were paid to Pi who subsequently sent the fees to FWM.

- In a letter dated 12 May 2017 a welcome letter from SVS securities noted *'Upon receipt of your application from Future Wealth Management…'*

Given the above evidence, I'm satisfied that on the balance of probabilities FWM were involved in the process of advising Mr T and making the arrangements for the investment in SVS.

The suitability letter dated 17 November 2017 clearly showed that advice was given. And I'm satisfied it's most likely HY was aware of the content of this letter and allowed it to be sent in his name, even if he didn't draft it himself. I note Pi has questioned the validity of the letter and the fact it wasn't signed by HY. But from the evidence I've detailed above, it's clear he, in his role at FWM, was involved in what was happening.

HY was also aware of L&C receiving an application and he was aware he was being paid a fee from Mr T's SIPP.

If HY wasn't aware of Mr T, or the advice he'd been given, it's likely HY would have questioned these emails and the payments received. But I've seen no evidence to suggest he did that. HY also wouldn't have had cause to be in possession of, and send Pi, the suitability report and all the other documentation. Taking everything into account, I don't think there's enough to reasonably conclude the recommendation letter was created and sent without HY's knowledge.

As well as the individual documents I consider the wider circumstances at play here. Specifically, Pi was able to provide our Service with all of the key documents typically generated during an advice process. Those include a fact-find, client agreement, suitability report and application forms all of which are recorded on FWM or Pi headed paperwork. It's difficult to envisage a situation where these would be in Pi's possession if it wasn't aware of or involved in the advice process. It's notable too that they'd received payment for the recommendations recorded in those documents.

My conclusion is therefore, on the balance of probabilities, that FWM gave advice to Mr T about the transfer to the SIPP. I'm also satisfied that FWM arranged the associated investments with SVS Securities. And Pi had allowed FWM to conduct these regulated

activities in their agreement with them. So, in summary, regulated activities were carried out by FWM that Pi were ultimately aware of and responsible for.

Having concluded that Pi was ultimately responsible for the advice Mr T received, for ease, I'll now refer to Pi when talking about the actions of Pi and FWM.

As our Service has the authority to look into Mr T's complaint, I've gone on to consider its merits.

The suitability of the advice

In deciding what's fair and reasonable, 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:

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

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

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

The purpose of the rules and guidance is to ensure that regulated businesses like Pi take reasonable steps to provide advice that is suitable for their clients' needs and that they're not inappropriately exposed to a level of risk beyond their investment objective and risk profile.

In order to ensure this was the case here, and that any recommendations met the requirements in COBS 9.2.2R, Pi needed to gather the necessary information for it to be confident that its advice met Mr T's objectives and was suitable. They also needed to make sure he could financially bear the risks of any recommendation made.

In 2009 the Financial Services Authority (now FCA) also published a report and checklist for pension switching that is still applicable today. That checklist identified four main areas where consumers had lost out:

- They had been switched to a pension that is more expensive than their existing one(s) or a stakeholder pension (because of exit penalties and/or initial costs and ongoing costs) without good reason.

- They had lost benefits in the pension switch without good reason. This could include the loss of ongoing contributions from an employer, a guaranteed annuity rate (GAR) or the right to take benefits at an earlier than normal retirement age.

- They had switched into a pension that does not match their recorded attitude to risk (ATR) and personal circumstances.

- They had switched into a pension where there is a need for ongoing investment

reviews but this was not explained, offered or put in place.

Pi say the 2009 report shouldn't be used in Mr T's case as his complaint is about a pension 'transfer' as opposed to a pension 'switch'. But I disagree. I'll explain why.

A pension *transfer* is the movement of safeguarded benefits into a flexible arrangement or to another scheme with safeguarded benefits. A pension *switch* is a transaction that is not within the definition of a pension transfer, but involves moving pension benefits from one scheme to another scheme of that same type. The movement of funds without safeguarded benefits from a personal pension to a SIPP would fall into this category.

Pi have referenced an alert sent by the FCA in 2014. The alert outlined firms' responsibilities to consider the underlying investments when giving pension transfer and pension switching advice. While I agree the alert is relevant to Mr T's complaint, it didn't supersede the 2009 guidance and I've considered both in reaching my findings.

There's no evidence that the L&G pensions contained any kind of guarantees that were lost during the switch to a SIPP. However, the B&CE pension did provide a lump sum benefit which was lost during the switch.

Pi may argue that the suitability report says it was not Pi's recommendation to transfer the B&CE pension. The report later goes on to say *'You have chosen to invest 100% of your pension monies from B&CE and Legal & General'*. But while Pi may not have recommended the transfer of the B&CE pension, I've seen no evidence they followed any insistent client process regarding it.

The recommendation not to transfer the B&CE pension should have explained in detail why it wasn't in Mr T's best interest to do so. And should have allowed for Mr T to digest that information before deciding what to do. Instead, the recommendation not to transfer it, and Mr T's decision to proceed anyway are all contained in the same recommendation letter with little detail on the reasons why.

The only reason I can see that Mr T would transfer this amount is if he thought he could improve on the benefits already offered by B&CE. Had Pi followed an insistent client process, I'd have expected them to clearly point out that Mr T was giving up a lump sum of £5,423 at age 65 and it was highly unlikely the transfer value of £755 would see investment returns that meant it exceeded this sum in the five years Mr T had until he was 65.

Had they done so, I think it's more likely Mr T would have followed their advice and left his pension with B&CE until his 65th birthday when he could receive the maximum lump sum benefit from it.

I think some of the other issues highlighted by the regulator were also present in Mr T's switch.

A SIPP is generally suitable for consumers who need access to a range of investments and funds not normally available via a basic pension wrapper. It's also typically suitable for individuals who need to have their monies managed in a bespoke, or discretionary style. Usually, a straight-forward stakeholder or personal pension may be more suitable for consumers who have only modest funds and non-complex needs. That's ordinarily because often, although not always, it's cheaper for the consumer.

Mr T had modest pension funds of around £69,000. It should have been clear to Pi from the fact-finding exercise they carried out that Mr T's responses indicated he was an inexperienced investor with very little other assets on which to rely and someone for whom

traditional low-cost pension arrangements would have been more appropriate.

The new SIPP wasn't a low cost or traditional pension arrangement. Given the relatively modest funds available to Mr T, it's unlikely that he would've benefited from or needed the services of a DFM especially when that was likely to be a more complex and expensive arrangement. I say that because the costs associated with the SIPP were greater than Mr T's existing pensions.

The ongoing charges associated with Mr T's L&G pensions were a £3 monthly charge on the FSAVC and a £1.50 monthly charge on the personal pension. In contrast the SIPP had an initial advice charge of 3.25%, a setup charge of £100, an annual maintenance charge of £199, fund charges of 0.75% and ongoing advice charges of 1% per annum. There was likely to also be transaction fees from SVS. There isn't any detail recorded about the charges of the B&CE pension.

Charges play a very important part when considering whether it's in the consumer's best interest to switch their pension or not. Whilst they can't be viewed in isolation, higher costs would generally point towards being a good reason not to move into that pension. So, that means there'd need to be other, more compelling reasons to justify a switch.

Although there may have been some advantages to taking out a SIPP in the form of greater flexibility, I'm not persuaded that Mr T, with his modest pension funds and investment inexperience, really needed access to a wider range of investments and especially via a DFM. There's also no evidence Mr T was particularly interested in where his funds were invested or that he had the knowledge or experience to understand the additional costs of the DFM model and the types of investments that would be made on his behalf.

I say that because I've seen no evidence that Pi really explored what Mr T's requirements were in retirement and how accessing his benefits flexibly would achieve that. This is something that I'd expect Pi to explore and record information about especially given that Mr T was already 60 at the time of the advice.

There could have been good reason to consolidate Mr T's funds in a plan that allowed him to access his funds flexibly. But I think it's likely that there would have been cheaper alternative options, such as a stakeholder pension or personal pension, that would likely have met his needs. I say that because Mr T's objective seems to have been that he wanted flexibility in his investment choices and accessing his funds which could have been achieved in a lower costing arrangement.

Pi dismissed a stakeholder plan in the suitability report saying;

'I am recommending a SIPP instead of a Stakeholder/Personal Pension because this is more suitable in your circumstances because ***it offers you a low cost way of managing your pension monies, within funds that meet your objectives and are in line with your risk profile.****'*

I think this statement is misleading. While the SIPP wrapper in itself may not have been prohibitively expensive, Pi were recommending a DFM arrangement which meant the overall proposition was likely to be more expensive than a Stakeholder or personal pension.

Pi also failed to explain why a stakeholder or personal pension wouldn't have funds that met Mr T's objectives. I've seen nothing to persuade me that Mr T sought to invest in sophisticated, non-conventional funds that a SIPP would allow access to. Instead, I think greater investment fund choice was of limited value to Mr T who had little experience in investing in stocks and shares.

Pi say that a stakeholder plan would have had a default low-risk strategy. But Mr T had sought professional advice from Pi and it's likely they could have found a provider with a wide range of conventional funds that were in line with Mr T's risk profile and objectives.

Taking everything into account, I'm satisfied it ought to have been clear to Pi that there was no obvious justification for Mr T to move from his existing pension schemes into a more complex arrangement in a SIPP and the subsequent investment in a DFM service with SVS. Leading to greater charges than his existing schemes or other suitable alternatives.

Pi have raised several arguments about the due diligence they'd completed on SVS and said that there were no warning signs of any issues with SVS when the advice was given to Mr T. But my findings are that Pi didn't justify the additional expense and complexities of the SIPP and DFM arrangement. And they didn't demonstrate how they were acting in Mr T's best interest by recommending them.

Pi argues that SVS's misadministration caused Mr T's loss. And it's possible that SVS's actions also caused or contributed to Mr T's losses. But I remain of the opinion that the root cause of any loss Mr T suffered was Pi's advice. This is because without Pi's involvement in the switch of the pensions and investment in the SIPP, Mr T wouldn't have invested in SVS. So, had Pi given Mr T a suitable personal recommendation, Mr T wouldn't have suffered the losses that he did, and I consider it fair and reasonable to require them to compensate Mr T for his losses in full.

If Pi still believes that the other parties actions contributed to the losses, it can take these concerns up directly with them.

Putting things right

Fair compensation

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

Regarding the B&CE Pension, as Mr T is now over the age of 65, Pi should pay him the lump sum benefit that would have been available to him at age 65. Pi has recorded this as £5,423.

As this would have provided a taxable income, the compensation should be reduced to notionally allow for any income tax that would otherwise have been paid. So, Pi must make a reduction of 20% - assumed to be Mr T's likely tax rate in retirement.

However, it's likely Mr T would have received the lump sum on his 65th birthday, so Pi must increase this compensation by 8% from the date of Mr T's 65th birthday to the date of my final decision.

Regarding the L&G pensions, I think Mr T would have invested differently. It's not possible to say precisely what he would have done, but I'm satisfied that what I've set out below is fair and reasonable given Mr T's circumstances and objectives when he invested.

What must Pi do?

To compensate Mr T fairly, Pi must:

- Compare the performance of Mr T's investment with that of the benchmark shown below. If the *actual value* is greater than the *fair value*, no compensation is payable.

If the *fair value* is greater than the *actual value* there is a loss and compensation is payable.

- Pi should also add any interest set out below to the compensation payable.

- If there is a loss, Pi should pay into Mr T'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 T'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. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr T won't be able to reclaim any of the reduction after compensation is paid.

- The notional allowance should be calculated using Mr T's actual or expected marginal rate of tax at his selected retirement age.

- It's reasonable to assume that Mr T is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr T 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%.

- Pay Mr T £350 for the distress and inconvenience caused to him and disruption to his retirement plans.

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

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
L&C Pension (Now Options)	Some liquid/some illiquid	For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	Date of investment	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance)

Actual value

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

The calculation must also account for the £755 that wouldn't have been transferred into the L&C pension from B&CE by removing its value from the start of the calculation.

It may be difficult to find the actual value of the portfolio. This is complicated where an asset is illiquid (meaning it could not be readily sold on the open market) as is likely to be the case here.

If there are illiquid assets Pi should take ownership of them by paying a commercial value acceptable to the pension provider. The amount Pi pays should be included in the actual value before compensation is calculated.

If Pi is unable to purchase the illiquid assets the actual value should be assumed to be nil for the purpose of calculation. Pi may require that Mr T 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.

Fair value

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

To arrive at the fair value when using the fixed rate bonds as the benchmark, Pi should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

Any withdrawal from the portfolio 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 to determine the fair value instead of deducting periodically.

If the L&C Pension (Now Options) only exists because of illiquid assets then it isn't possible for Mr T to close it. In order for the L&C Pension (Now Options) to be closed and further fees that are charged to be prevented, those investments need to be removed. I've set out above how this might be achieved by Pi taking over the investment, or this is something that Mr T can discuss with the provider 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. If Pi is unable to purchase the investment, to provide certainty to all parties I think it's fair that it pays Mr T an upfront lump sum equivalent to five years' worth of wrapper fees (calculated using the fee in the previous year to date). This should provide a reasonable period for the parties to arrange for the L&C Pension (Now Options) to be closed.

Why is the benchmark I've suggested suitable?

I've chosen this method of compensation because:

- Mr T wanted Capital growth with a small risk to his capital.
- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to his capital.
- 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.

- I consider that Mr T's risk profile was in between, in the sense that he was prepared to take a small level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mr T into that position. It does not mean that Mr T would have invested 50% of his money in a fixed rate bond and 50% in some kind of index tracker investment. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr T could have obtained from investments suited to his objective and risk attitude.

My final decision

My final decision is that I uphold this complaint. Pi Financial Ltd trading as Future Wealth Management must calculate and pay compensation as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 19 January 2024.

Timothy Wilkes
Ombudsman