DRN-4495730

The complaint

Mrs S complains about the acts and advice of Ms L in the transfer of her pensions to a Self-Invested Personal Pension (SIPP) to purchase commercial property belonging to her husband's business. The purchase didn't proceed and she thinks she's lost valuable pension benefits and incurred unnecessary fees as a result. Ms L was connected to Policy Services Limited (PSL) from 2018 onwards and Mrs S thinks that PSL is therefore responsible.

What happened

Ms L worked was an adviser at Sanlam. In 2017, Mrs S's husband was looking to purchase his business's commercial property with his and Mrs S's pensions. Ms L advised Mrs S to transfer her pension to a SIPP in order to facilitate this.

I understand the transfer to a Sanlam SIPP was made a short time later.

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.

PSL says that it took over servicing of Mrs S's plan from September 2018. And it's provided a copy of the agreement it says it had in place with Mrs S setting out the service it would provide.

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 she said she suffered by transferring her pension, Mrs S complained to a number of the regulated parties associated with Ms L:

- Her complaint against Sanlam was held to be not one that we could consider. That's because, for the purposes of our rules, Mrs S could not be said to be a "consumer" with respect to advice given to her by Ms L whilst working for Sanlam in 2017 as it related to using her pension for business purposes (i.e. the acquisition of her husband's property). That complaint is now closed.

- Her complaint against SJP was also 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 Sanlam pensions, that wasn't something that SJP was responsible for. That complaint is also closed.

- This decision deals with Mrs 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 Mrs 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 Mrs S for a £3,000 fee that had been taken from her pension 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. Nor was PSL responsible for advice Ms L may have later given because she was not authorised by PSL to give any investment advice or arrangements.

However, the investigator said that PSL had obligations to Mrs 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 Mrs 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.

Mrs 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 we had jurisdiction to look at part of the complaint and that it should be upheld.

PSL didn't dispute my findings.

Mrs S responded to only express her (understandable) disillusionment with all parties involved – especially the fact it required a complaint from her to elicit PSL's acknowledgment that £3,000 had been taken in error. She was also disappointed with my award of £150 for the distress and inconvenience caused to her.

Given the above – my findings below remain very largely the same as in 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 two aspects of the complaint.

1. The original advice in 2017 to transfer to the Sanlam SIPP.
2. The failure between 2017-2021 to appropriately advise and provide a service to Mrs 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. As Mrs S knows from her complaint against Sanlam, she is not a "consumer" for the purposes of bringing a complaint about the advice from 2017. That is one jurisdiction barrier to this complaint against PSL. And Ms L wasn't associated with PSL at the time of the advice. She was a Sanlam adviser until July 2018. So that is another jurisdiction barrier. As such, we don't have jurisdiction to consider a complaint against PSL for the advice in 2017.

Point 2 is a matter we do have jurisdiction to consider. It is a general matter relating to her pension provision rather than one directly relating to the commercial property purchase – so Mrs S is a "consumer" for these purposes. PSL accepts that it took on responsibility for servicing Mrs 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 Mrs S in the period after the it took on Mrs S's policy. Therefore, I'm satisfied that we do have jurisdiction to consider the role of PSL in any losses sustained by Mrs S from that period until 2021 when Mrs 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.

Having looked at the agreement between PSL and Mrs S, I think it's clear in setting out that further investment advice would only be provided if Mrs 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 Mrs S about whether she should switch her investment funds.

The agreement between PSL and Mrs S did however set out that, in return for an annual fee of 1% of her 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, 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.*

Mrs 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 Mrs S, it didn't confirm whether it had provided the "comprehensive valuation" or 6 month valuation reports. It may well have done.

But with regard to the reviews, it said that Ms L attended eight meetings with Mrs 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*** **[Mrs S and her husband]** ***would not return calls, emails…"*** (my emphasis)

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)

Whether or not the eight meetings took place, it doesn't look like any kind of *review* of Mrs S's pension happened. PSL's and Ms L's evidence is clearly 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 Mrs S's pension. This wasn't something that was set out in the agreement between PSL and Mrs S.

PSL has said that it didn't provide the "traditional review" (which I've understood to mean the Ongoing Service Review) because of the circumstances involved in Mrs 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 Mrs S's pension in September 2018. Despite this, it agreed to offer the ongoing review service and received fees for this.

In total PSL received over £7,500 in fees from September 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 Mrs S fairly in respect of the remainder of the fees it took from Mrs 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 Mrs 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 Mrs S and her husband in her previous role as a Sanlam adviser. I say this because her notes for Mr S's later SIPP application in 2019 (where she used PSL's details) 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 for Mr S said that the ongoing 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 and Mrs S they 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 Mrs 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 Mrs S was in an unusual situation where she was trying to implement a difficult property purchase via her pension. In those circumstances, it should not have charged her for a service it wasn't providing and couldn't provide.

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

Putting things right

PSL shouldn't have taken the fees it charged Mrs 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 Mrs S's pension. So it would be fair for PSL to ask Mrs S's pension provider (Sanlam – or her current pension provider if she has since switched) to calculate the current notional transfer values had she 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 will apply the benchmark method of redress as obtaining the notional values is difficult. That is acceptable.

Any additional sum that Mrs 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 Mrs S has suffered is within her pension, it's right that I try to restore the value of her pension provision if that's possible. So, if possible, the compensation for the loss should be paid into Mrs 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 Mrs S could claim. The notional allowance should be calculated using Mrs S's marginal rate of tax.

If it's not possible to pay the compensation into Mrs S's pension, the compensation should be paid to Mrs 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 Mrs S should be reduced to notionally allow for any income tax that would otherwise have been paid. It's reasonable to assume that Mrs S is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, as Mrs 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 Mrs S £150 for the distress and inconvenience this matter has caused her – which has exacerbated an already difficult time for her with regard to her pension provision. I know Mrs S is disappointed with this amount – but I think it's commensurate with what PSL – rather than Ms L or any other party - is responsible for.

PSL should pay fair compensation as set out above within 28 days of being notified that Mrs 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 Mrs S. Income tax may be payable on any interest paid. If PSL deducts income tax from the interest, it should tell Mrs S how much has been taken off. PSL should give Mrs S a tax deduction certificate in respect of interest if Mrs S asks for one, so she can reclaim the tax on interest from HM Revenue & Customs if appropriate.

My final decision

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

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

Abdul Hafez
Ombudsman