

complaint

Mr C's complaint is about the transfer of his Friends Life pension fund to the London Quantum Retirement Benefit Scheme (London Quantum RBS). The transfer was arranged by Gerard Associates Limited.

background

I issued my provisional decision on 12 February 2018. A copy of my provisional decision is attached to and forms part of my final decision.

Gerard Associates did not agree. They said:

- They were not involved in the promotion of any investment to Mr C. These investment promotions were separately agreed by the professional trustee and sponsoring employer. The report by The Pensions Regulator (TPR) confirms this.
- They had no access to Mr C's account with London Quantum RBS. They could not have any control about when the investment was made.
- They did not agree with TPR's report that the sophisticated investor declaration had not been completed correctly. Mr C signed to confirm he had received a letter dated 5 November 2015 with a full explanation of the high net worth and sophisticated investor statements.
- TPR's report is incorrect when it says Gerard Associates organised the introducers.
- They still do not agree that they advised or arranged the investments. The investments were arranged by the scheme trustees and the scheme sponsoring employer.
- They had no commercial or agency arrangements with any of the investments Mr C requested.
- At no stage did they make a personal recommendation to Mr C or discuss his investment requirements with him or another party.
- They believe they did comply with the client's best interests rule.
- They did not promote the investments to Mr C or comment on the suitability of the investments for him. He had signed numerous documents confirming his sophisticated investor status. If any advice had been given they would have insisted on a fully advised process.
- Most of TPR's report is about maladministration. Gerard Associates were given assurances by the sponsoring employer and the trustee that the scheme was correctly administered and operated a suitable back office platform. The non-payment of Mr C's tax free cash is a direct result of delays by the scheme. Gerard Associates could not have foreseen the freezing of the bank account or investigation based on fears of pension liberation.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I think that the complaint should be upheld for the reasons given in my provisional decision.

Gerard Associates arranged for three pension plans to be transferred to the London Quantum RBS. Two of the pension plans were personal pensions. The third plan was an occupational pension with Friends Life. Arranging the sale of an investment is a regulated activity. A personal pension is a designated investment. So arranging the transfer of the personal pension is a regulated activity. This service can investigate a complaint about the transfer of the personal pensions.

was Gerard Associates promoting the investments to be made in London Quantum RBS?

The first evidence I have seen that Gerard Associates was involved in arranging the investments within the London Quantum RBS is the letter signed by Mr C on 15 October 2014. The letter was addressed to Gerard Associates. It was a pre-printed letter for Mr C to sign. It confirmed that Mr C had received, read and understood the financial promotion literature for a number of investments.

Mr C signed to confirm that he understood the investments weren't regulated and were only suitable for sophisticated investors. He only wished to receive guidance on the transfer of his pension funds.

Gerard Associates wrote to Mr C on 5 November 2014. The letter enclosed information received from Mr C's existing pension providers. The letter was to provide information and guidance only.

The letter went on to explain that the documents included with the report should allow Mr C to evaluate the decisions about potentially transferring his pension fund. It explains the investment strategies were not regulated. And that Mr C had confirmed receiving from another party individual investment prospectus and promotional material.

A number of documents were enclosed with the letter. These were:

- Pension Schemes and Investment Risk Overview
- Gerard Associates Limited-Client and Fee Agreement
- Statement of Investment Principles (London Quantum RBS). There was a note explaining this was not a financial promotion and details of the investments were other information purposes only.
- Members booklet for London Quantum RBS

The next section of the letter explained Mr C should be aware of all the features and benefits of his existing pensions. This was followed by section headed "Why London Quantum RBS?" The scheme could accommodate the investments Mr C had expressly requested. The scheme was a group pension arrangement with the specific highest risk mandate. Mr C would need to agree and sign a sophisticated investor, high net worth or self-certified sophisticated investor statement to proceed with the transfer of pension benefits. That was because the investments could not be promoted to ordinary retail investors.

The letter finished by explaining that Mr C wished to proceed he should complete the enclosed transfer and application pack.

I remain of the view that Gerard Associates was promoting the investments to Mr C. I accept that the initial promotion was made by an unregulated firm. But the information communicated in the letter of 5 November 2014 included details of the investments to be made. A promotion can be made by more than one party. I think Gerard Associates was involved in the promotion.

should Gerard Associates have promoted the unregulated funds to Mr C?

Mr C was a retail client. I explained in my provisional decision that I did not think Mr C was either a high net worth or sophisticated investor. I remain of the view that Gerard Associates should not have promoted the unregulated funds to Mr C for the reasons given in my provisional decision.

what should Gerard Associates have done?

I think Gerard Associates should not have promoted the unregulated funds to Mr C. And Gerard Associates should not have processed the transfer for Mr C. He's told us that he was looking to take his pension benefits. That could have been achieved by taking benefits directly from his pensions. There was no need to transfer into the London Quantum RBS; and the investments in that scheme were clearly unsuitable for him.

what would Mr C have done?

I think Mr C only transferred because he had been told about the scheme by an unregulated introducer. The funds were then promoted to him by Gerard Associates. Mr C wanted to take his pension benefits. That could easily have been achieved by taking benefits from a personal pension. I don't think Mr C would have transferred the Friends Life pension if Gerard Associates had acted in his best interest. The letter from Gerard Associates dated 5 November 2014 was about all three of Mr C's pension plans. Two of these were not transferred. If Gerard Associates had acted in Mr C's best interests it would not have arranged the transfer of any of the three policies. I am satisfied that Mr C would not have transferred the Friends Life policy.

fair compensation

My aim is to put Mr C as closely as possible into the position he would probably now be in if Gerard Associates had not arranged the transfer to the London Quantum RBS.

I think Mr C 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 C's circumstances and objectives when he invested.

what should Gerard Associates Limited do?

To compensate Mr C fairly, Gerard Associates must:

- Compare the performance of Mr C'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.

If there is a loss, Gerard Associates should pay a sum into Mr C'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. I think it's unlikely that this option will be available to Mr C.

If Gerard Associates is unable to pay the compensation into Mr C'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 C's actual or expected marginal rate of tax at his selected retirement age. Mr C is likely to be a basic rate taxpayer in retirement. The reduction should equal the current basic rate of tax. However, Mr C would have been able to take a tax free lump sum; the reduction should be applied to 75% of the compensation.

- Pay Mr C £500 for the distress and inconvenience caused by the loss of his pension fund. He hasn't been able to take the tax free cash or income he wanted in retirement. This has been very distressing for him.

Gerard Associates should add interest as set out below. Income tax may be payable on any interest paid. If Gerard Associates deducts income tax from the interest, it should tell Mr C how much has been taken off. Gerard Associates should give Mr C 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
London Quantum RBS	still exists	FTSE UK Private Investors Income Total Return Index	date of investment	date of my decision	8% simple a year from date of decision to date of payment

actual value

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

It may be difficult to find the *actual* value of the investment. This is complicated where an investment is illiquid (meaning it could not be readily sold on the open market) as in this case. So, the *actual value* should be assumed to be nil to arrive at fair compensation.

Gerard Associates won't be able to buy the investment. So the *actual value* should be assumed to be nil for the purpose of calculation. Gerard Associates may require that Mr C provides an undertaking to pay Gerard Associates 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 the payment from the pension plan. Gerard Associates 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.

why is this remedy suitable?

I've chosen this method of compensation because:

- Mr C wanted income with some growth and was willing to accept some investment risk.
- 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 C's circumstances and risk attitude.

my final decision

I uphold the complaint. Gerard Associates Limited should calculate the loss and pay compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 16 May 2018.

Roy Milne
ombudsman

copy of provisional decision

complaint

Mr C's complaint is about the transfer of his Friends Life pension fund to the London Quantum Retirement Benefit Scheme (London Quantum RBS).

background

Mr C was referred to Gerard Associates by an unregulated business. Gerard Associates is a firm that is regulated in the UK by the Financial Conduct Authority (FCA). Mr C signed a pre-printed letter on 15 October 2014 saying that he had received, read and understood the relevant promotion literature for the following funds:

- Quantum Managed FX Fund
- Dolphin Capital
- Colonial Capital US Social Housing Bond
- Best Car Parks
- Best ABC Bond

The declaration above his signature said:

I understand that these investments are unregulated and only suitable for sophisticated investors and confirm that I wish to receive advice on the transfer of my pension funds(s).

Mr C told us that he was nearing his 65th birthday and he wanted to start taking an income using the yields from the funds.

Gerard Associates has supplied a copy of a pension report dated 5 November 2014. This confirmed that they were not providing advice. The report mentioned the new scheme charges of £400 initial fee and an annual ongoing fee of £400. The report said that Mr C should be aware of the features of his existing pension plans and that the new scheme could accommodate his choice of investments.

Mr C signed a fee agreement on 17 November 2014. The fees were shown as a minimum of £2,100 or 4% of the transfer value up to £100,000 and then 2% of the next £400,000 and 1% for balances over £500,000.

A declaration signed by Mr C on 17 November 2014 said:

I understand and agree that Gerard Associates Limited have provided me with guidance on a pension transfer only and have not given me advice or recommendations as to the suitability of the RBS investment.

(RBS was the London Quantum Retirement Benefits Scheme into which the transfers were to be invested. This was an occupational pension scheme according to the copy of the Member Booklet given to this service.)

A Sophisticated Investor Declaration was also signed by Mr C on 17 November 2014. While the form asked Mr C to give several reasons for transferring his funds, this section remained blank.

Mr C was transferring three pension funds. Two of these were with Abbey Life with transfer values of about £65,000 and £18,000. The other fund with Friends Life was around £73,000.

The Friends Life transfer was successful but Abbey Life delayed the transfers for some reason. Mr C, not long after the Friends Life transfer had been made received a telephone call from the police. They said that there were concerns about the London Quantum RBS investments.

Mr C telephoned Gerard Associates and spoke to one of their employees. He has told us that this employee said that she was an administrator for the trustees of the scheme (Dorrixo Alliance) and apparently she accessed Mr C's account with the London Quantum RBS. She said that she could see that the Friends Life pension fund had been directed to the trustee bank account pending investment.

Mr C raised his concerns with Gerard Associates and their director, wrote to him on 30 January 2015 saying:

....I can assure you the scheme is completely correct, authorised and regulated and only exists to provide retirement benefits.

Mr C later found out that the employee's statement was not correct as the funds had been invested at the time she spoke to him.

Mr C has told us that these funds were to be the main source of retirement income other than State benefits. He had no other savings or investments but had invested in some bank shares a while ago, the value of which had reached £8,000. These had been sold some time ago. As he has not been able to access any benefits from the London Quantum RBS, his wife has had to return to work. Mr C has been unwell so could not do so.

The Pensions Regulator has since removed Dorrixo Alliance as the trustees. It has appointed Dalriada Trustees as there were concerns about the scheme investments. Dalriada has informed all scheme members that the assets of the scheme have been frozen pending investigation.

Mr C complained to Gerard Associates who rejected his complaint. They said that they had not given advice and had provided all the information required for him to make the decision about the transfers. Mr C, not happy with this reply, referred his concerns to this service.

One of our adjudicators investigated the complaint. The adjudicator thought that COBS 10 was relevant for this complaint. This covered the requirement for businesses to assess appropriateness for non-advised transactions. She wrote to Gerard Associates explaining that the complaint should be upheld. She set out how Gerard Associates should compensate Mr C for his losses.

Gerard Associates didn't agree with the adjudicator. They said in summary:

- They followed up on the call that the police made to Mr C. They spoke to the policeman involved who said that he hadn't given any concerns about the London Quantum RBS. He'd contacted a number of members to raise awareness about pension liberation issues.

- Dorrixo had agreed to transfer the funds to another provider but this had failed because the bank had frozen the scheme account as a commercial decision had been to not operate this style of account. The scheme had been authorised and registered with HMRC. The Pensions Regulator had a copy of the Trust Deed.

Gerard Associates has given us a copy of their email to the London Quantum RBS trustees dated 6 March 2015 requesting a transfer of Mr C's funds and requesting discharge forms. They've also supplied a copy of an email from London Quantum RBS to another SIPP provider dated 10 April 2015 confirming receipt of a transfer request saying that the request had been passed to the trustees.

The bank account incident was outside their control. They could not comment on the investment of Mr C's transfer value as this was outside their involvement.

- If Gerard Associates were to assess appropriateness then they could not rely upon the Sophisticated Investor Declaration. Mr C had been referred to them as a sophisticated investor and had signed several documents confirming this. If an assessment of appropriateness took place, this would have been deemed as giving advice.

Mr C had been given information and a guidance pack. These were robust in explaining the high risk nature and that he could lose the entire fund. Mr C was cognisant of the risks and had confirmed that he had read and understood all information and warnings. He had decided to proceed. He had confirmed that he would have transferred without Gerard's involvement.

- Mr C had never said that he was inexperienced or lacked sufficient knowledge to understand the risks. The documents had clearly explained the FCA's views on unregulated investments and for whom they may be suitable. The documents asked Mr C to contact Gerard Associates if he was unsure about suitability. They would have then given other options if he had said that he was not a sophisticated investor.
- Gerard Associates hadn't been invited to reply to The Pension Regulator's (TPR) notice and there was no right to do so. They unequivocally denied that any scheme members were unaware of the nature of the investments. The adjudicator agreed that warnings had been given.
- The TPR had said that the Sophisticated Investor Declaration had not been properly executed. Again Gerard Associates had no right of reply to this. They contested that they had given more information than was the basic requirement. Mr C had signed declarations that he had read and understood the information.
- The FCA guidance about unregulated introducers had been issued after Gerard Associates had sent Mr C the report.
- There had been a court case which found that members of a personal pension scheme had a statutory right to transfer out. Also, the case found that a member was an 'earner' even if the source of earnings was not from the sponsoring employer of the receiving scheme. Gerard Associates should not have and could not have refused to arrange the transfer.

Mr C made the following comments:

- He hadn't heard about the bank account issue before and it didn't make sense. He had been assured on several occasions that his funds were available in cash. If the bank had decided not to allow that type of account then surely the funds would have been transferred to another account. However, if the account had been frozen as claimed then alarm bells should have rung and he should have been told immediately.

Mr C had only found out that his funds had in fact been invested when contacted by Dalriada.

- Gerard Associates referred to several signed documents confirming he was a sophisticated investor. During a telephone conversation with the adjudicator he said he considered himself sophisticated - not in terms of financial markets but he did read through all paperwork and was satisfied that the funds had had good returns and would continue to do so. He thought they would provide distributions to support his income needs. Without agreeing to sign these declarations he would not have been allowed to proceed with investing. He had been assured that he would be able to nominate the underlying investments he wanted. He was advised that several of those available options were sound. Hence he agreed to sign the required declarations.
- He had clearly stated in the application form dated 18 November 2014 that he wanted the tax-free cash to be invested in cash. This instruction had been ignored.

The complaint has now been passed to me.

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I am required to take into account the law; regulator's rules and guidance; codes of conduct and what I consider to have been industry good practice at the time.

Arranging investments is a regulated activity. This includes making arrangements to buy or sell investments. Mr C had a personal pension. Arranging for the investments to be sold and the value transferred to another scheme was a regulated activity.

the relevant rules

The regulator's handbook sets out the rules firms must follow. These start with the high level standards. Those standards include the principles that firms must follow. I think Principles 1 – integrity; 2 – skill, care and diligence; 6 - customers' interests and 8 - conflicts of interest all apply in this case.

The rulebook also sets out the business standards firms must follow. These are set out in the conduct of business sourcebook (COBS). I think COBS 2.1 is particularly relevant. This is known as the client's best interests rule and says:

A firm must act honestly, fairly and professionally in accordance with the best interests of its client.

Mr C invested in non-mainstream pooled investments. COBS 4 is also relevant and should be taken into account.

London Quantum RBS

The Pensions Regulator investigated the London Quantum RBS. It then made an order to remove the existing trustees and appoint new trustees. That was to safeguard the assets in the scheme and ensure the trustees were competent to carry out the duties of a trustee. I think there is relevant information in the final notice issued by The Pensions Regulator on 8 February 2016.

The RBS was established in 2012. From about April 2014 it was open to new members. There is evidence in the final notice that Gerard Associates advised the trustees to appoint a new trustee. And further evidence that Gerard Associates brought a number of introducers on board. I note the panel made no finding on that point.

Gerard Associates was responsible for producing various letters and forms to be sent to new members. This was after they had been introduced to the RBS by an introducer. The forms were then sent on to the trustees of the RBS.

Gerard Associates role was described as “*simply helped the process of people joining the scheme*”. It was also noted that Gerard Associates did not provide advice to new members of the scheme. Gerard Associates were paid about £220,000 in fees.

what did Gerard Associates do?

There is some evidence from the final notice of The Pensions Regulator that Gerard Associates was involved in organising the introducers for the RBS. The first evidence I have about Gerard Associates involvement with Mr C are two letters signed by Mr C on 10 October 2014. These ask Abbey Life and Friends Life to provide details of the personal pensions to Gerrard Associates.

The terms of business signed for Gerard Associates said that no advice was being given. They did obtain information from Mr C about his personal and financial circumstances. Gerard Associates also promoted the unregulated funds to Mr C.

Gerard Associates sent a report to Mr C about the London Quantum RBS. Gerard Associates charged a fee of 4% of the transfer value. But, it said it was providing guidance or information. It was not advising about the transfer.

Forms were signed to transfer the personal pensions to the London Quantum RBS. These were dated 18 November 2014. The forms had already been seen by the unregulated introducer. It appears that he had signed copies of Mr C's passport and utility bill to verify Mr C's identity in April 2014.

was Gerard Associates promoting the investments in London Quantum RBS?

There are restrictions about who is able to make a financial promotion to invite or induce others to engage in investment activity. And there are restrictions about the type of person an unregulated investment can be promoted to.

I think it is clear that a financial promotion was made to Mr C. He signed a letter addressed to Gerard Associates. He confirmed that he had received, read and understood the relevant financial promotion literature for a number of different funds. These funds were not regulated by the FCA and only suitable for sophisticated investors. Mr C wished to receive guidance on the transfer of his pension funds.

I am satisfied that Gerard Associates promoted the funds to Mr C.

I think the final notice from The Pensions Regulator is informative. It shows that there is evidence Gerard Associates was involved in promoting new members to the RBS. There is no doubt in my mind that Mr C was referred to Gerard Associates with the specific intention that his pension benefits would be transferred to the RBS. The report from Gerard Associates explains that the investment strategies Mr C had expressly requested are not regulated by the FCA and are therefore highest risk. However, the funds Mr C invested in were promoted to him by Gerard Associates. It appears that these funds were promoted on the basis Mr C was a sophisticated investor.

should Gerard Associates have promoted the unregulated funds to Mr C?

The rules at the time about promoting unregulated funds to retail clients are quite specific. The regulator's handbook requires a specific form to be completed. Mr C was not a high net worth investor. So for Gerard Associates to promote the funds to Mr C he had to be a sophisticated investor.

I have quoted an extract from COBS 4.12.8R, which is the relevant rule:

A *self-certified sophisticated investor* is an individual who has signed, within the period of twelve months ending with the day on which the communication is made, a statement in the following terms:

"SELF-CERTIFIED SOPHISTICATED INVESTOR STATEMENT

I declare that I am a self-certified sophisticated investor for the purposes of the restriction on promotion of non-mainstream pooled investments. I understand that this means:

- (i) I can receive promotional communications made by a person who is authorised by the Financial Conduct Authority which relate to investment activity in non-mainstream pooled investments;
- (ii) the investments to which the promotions will relate may expose me to a significant risk of losing all of the property invested.

I am a self-certified sophisticated investor because at least one of the following applies:

- (a) I am a member of a network or syndicate of business angels and have been so for at least the last six months prior to the date below;
- (b) I have made more than one investment in an unlisted company in the two years prior to the date below;

(c) I am working, or have worked in the two years prior to the date below, in a professional capacity in the private equity sector, or in the provision of finance for small and medium enterprises;

(d) I am currently, or have been in the two years prior to the date below, a director of a company with an annual turnover of at least £1 million.

I accept that the investments to which the promotions will relate may expose me to a significant risk of losing all of the money or other property invested. I am aware that it is open to me to seek advice from someone who specialises in advising on non-mainstream pooled investments.

Signature:

Date: "

Mr C signed a form without any explanation about why he was a sophisticated investor. The bullet points numbered (a) to (d) above were not included on the form. The evidence I have available shows that Mr C did not meet any of the criteria that should have been on the form. The form completed by Mr C was not in the form prescribed under the rule. He didn't qualify in any of the other categories or exemptions. The rules had been changed in January 2014. This followed a period of consultation because there was widespread concern about the promotion of unregulated funds to retail clients. Gerard Associates should have been well aware of the rules for promoting such funds.

Mr C provided enough information for Gerard Associates to work out that he was not a high net worth or sophisticated investor. So the funds Gerard Associates promoted to him had not been promoted in accordance with the rules. He should not have invested in the unregulated funds. Gerard Associates therefore had enough information to know that the transfer was not in Mr C's best interests.

I think given the number of cases Gerard Associates processed and the unregulated investments involved it must have been aware that these were unlikely to be suitable for most investors. I am left with the impression that the process Gerard Associates adopted was to try and avoid any responsibility under the rules at the time. It produced a lengthy report, but stopped short of actually providing advice.

what should Gerard Associates have done?

I think Gerard Associates should not have promoted the unregulated funds to Mr C. And Gerard Associates should not have processed the transfer for Mr C. He's told us that he was looking to take his pension benefits. That could have been achieved by taking benefits directly from his personal pensions. There was no need to transfer into the London Quantum RBS; and the investments in that scheme were clearly unsuitable for him.

what would Mr C have done?

I think Mr C only transferred because he had been told about the scheme by an unregulated introducer. The funds were then promoted to him by Gerard Associates. Mr C wanted to take his pension benefits. That could easily have been achieved by taking benefits from a personal pension. I don't think Mr C would have transferred the personal pension if Gerard Associates had acted in his best interest.

fair compensation

My aim is to put Mr C as closely as possible into the position he would probably now be in if Gerard Associates had not arranged the transfer to the London Quantum RBS.

I think Mr C 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 C's circumstances and objectives when he invested.

what should Gerard Associates Limited do?

To compensate Mr C fairly, Gerard Associates must:

- Compare the performance of Mr C'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.

If there is a loss, Gerard Associates should pay into Mr C'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 Gerard Associates Limited is unable to pay the compensation into Mr C'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 C's actual or expected marginal rate of tax at his selected retirement age. Mr C is likely to be a basic rate taxpayer in retirement. The reduction should equal the current basic rate of tax. However, Mr C would have been able to take a tax free lump sum; the reduction should be applied to 75% of the compensation.

- Pay Mr C £500 for the distress and inconvenience caused by the loss of his pension fund. He hasn't been able to take the tax free cash or income he wanted in retirement. This has been very distressing for him.

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

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London Quantum RBS	still exists	FTSE UK Private Investors Income Total Return Index	date of investment	date of my decision	8% simple a year from date of decision to date of payment

actual value

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

It may be difficult to find the *actual* value of the investment. This is complicated where an investment is illiquid (meaning it could not be readily sold on the open market) as in this case. So, the *actual value* should be assumed to be nil to arrive at fair compensation.

Gerard Associates won't be able to buy the investment. So the *actual value* should be assumed to be nil for the purpose of calculation. Gerard Associates may require that Mr C provides an undertaking to pay Gerard Associates 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 the payment from the pension plan. Gerard Associates 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.

why is this remedy suitable?

I've chosen this method of compensation because:

- Mr C wanted income with some growth and was willing to accept some investment risk.
- 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 C's circumstances and risk attitude.

my provisional decision

I uphold the complaint. My provisional decision is that Gerard Associates should pay the amount calculated as set out above.