

## complaint

Mr T has complained about LP Financial Management Limited. He is unhappy about the transfer of his pension benefits into a new Self-Invested Personal Pension (SIPP) to allow him to invest into Harlequin, an unregulated fund.

## background

In 2012, Mr T invested £30,000 of his SIPP fund into Harlequin. Mr T had met with Atlantic Overseas (Atlantic), an unregulated investment company linked to Harlequin, and the investment was placed in a new Lifetime Company SIPP. Mr T signed the SIPP application form and the pension transfer was processed by LP although Mr T did not meet with them.

LP wrote to Mr T on 11 December 2012 offering a retrospective review of the pension transfer process as part of their on-going monitoring programme. They concluded that the SIPP to SIPP transfer was not in Mr T's best interests. LP accepted no responsibility for this transfer but paid Mr T £100 in *'full and final settlement in relation to the transfer'*.

The Harlequin investment has since become illiquid and Mr T complained to LP and Atlantic about the advice to transfer his pension.

His complaint was rejected by LP as it said its involvement was limited to processing the SIPP to hold the investment recommended by another adviser. LP's connection was clearly limited to the SIPP wrapper and not the underlying investment. The involvement of the other adviser was shown by the SIPP application form.

LP said that Mr T made the decision to invest in Harlequin before it was involved. LP added it only became aware of the transfer in December 2012 when advised of the transfer by Lifetime.

Mr T referred his complaint to us.

Our adjudicator thought Mr T's complaint should be upheld. He said it was clear Harlequin was introduced by an unregulated third party. He believed LP processed the Lifetime SIPP so the investment could be made. The adjudicator felt it was wrong to do this without considering whether the underlying investment was suitable.

LP said it had no role in arranging the transfer to the SIPP. The adjudicator's opinion relied on LP's letter to Mr T dated 11 December which recorded *'the transfer was processed by LP as Lifetime SIPP requires all pension transfers to be completed by a firm that is regulated'*. He felt this confirmed their involvement as a regulated business.

As a regulated firm, LP had responsibilities to Mr T. The adjudicator felt that LP would have known that Mr T was transferring much of his pension wealth to the SIPP. LP should have known that Harlequin was a high risk fund and only suitable for sophisticated investors. The adjudicator didn't think Mr T was a sophisticated investor and so Harlequin was unsuitable for him. LP should have made it clear to Mr T that the fund was unsuitable when it processed the SIPP transfer.

He noted that Mr T may have been persuaded that Harlequin was a good idea by an unregulated third party; however Mr T wasn't able to complain to us about this. LP's involvement had related to a regulated activity and it had to comply with its regulatory obligations. That included considering Mr T's circumstances and giving suitable advice. It also had to act in Mr T's best interests.

The adjudicator also didn't believe LP could avoid its responsibility by offering a retrospective review.

LP didn't agree with the adjudicator and asked for the complaint to be referred to an ombudsman for review.

In brief, LP added the following points:

- the wording of 11 December letter was deliberate to avoid alarming Mr T.
- the pension transfer was handled directly between Atlantic and Lifetime.
- it gave Mr T no advice and they did not agree to be involved with Mr T's pension transfer.
- Lifetime should take responsibility for monitoring suitability.

As no agreement has been reached the case has been passed to me for a final decision.

### **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I agree with the adjudicator for the same reasons.

Atlantic acted in an unregulated capacity introducing Mr T to Harlequin. LP has said they were not aware that Mr T had been approached about Harlequin by the unregulated business or that the transfer had taken place. However, I agree with the adjudicator that their letter to Mr T of 11 December 2012 indicates otherwise. It recorded that *'the transfer was processed by LP as Lifetime SIPP requires all pension transfers to be completed by a firm that is regulated'*. I am not persuaded that this letter is deliberately worded only to avoid alarming Mr T.

LP offered to *'review the process that was implemented to complete the transfer'*. When this offer was accepted, LP acknowledged that the SIPP to SIPP transfer was unsuitable for Mr T. They also paid him £100 for the *'time and trouble....and in full and final settlement...in relation to the transfer of your pension to the Lifetime SIPP'*. This is unusual wording from LP since they took no responsibility for the transfer or investment. If LP had no involvement in the transfer, I don't think that it would have felt obliged to conduct the review and make an offer which specifically related to the transfer.

I consider that LP was involved with this pension transfer arrangement in a regulated capacity. In processing the SIPP application, LP would have seen the Lifetime SIPP application form which recorded the 'Harlequin Investment Questionnaire and Supplementary Notes' on the front cover.

I agree that Mr T could not be defined as a sophisticated investor. Harlequin, an unregulated, high risk overseas property investment was therefore unsuitable for him. This second SIPP was only set up to allow the investment and so I don't think it was suitable.

As the regulated party involved, LP had professional and regulatory obligations and it should've questioned the transfer. I have not seen evidence to persuade me that LP carried out even basic checks to confirm that the assessment of appropriateness was applied. Had it done so, it would have concluded that Mr T could not reasonably be treated on an '*execution only*' basis and that it was required to give Mr T suitable advice. It did not do so and so failed in its duty to Mr T, it did not meet its regulatory obligations or act in his best interests.

In the circumstances, I have concluded from the evidence I have seen that transferring Mr T's pension to the SIPP and then investing in Harlequin was unsuitable.

I accept that other parties may have some liability for Mr T's loss. If LP wishes to take an assignment of any rights of action Mr T may have against other parties it may do so as a condition of Mr T accepting this decision.

### **my final decision**

I uphold this complaint.

LP Financial Management Limited ('LP') must pay redress to Mr T as I have set out below.

#### *fair compensation*

In assessing what would be fair compensation, I consider that my aim should be to put Mr T as close to the position he would probably now be in if he had not been given unsuitable advice.

I think Mr T would have invested differently. It is not possible to say *precisely* what he would have done, but I am satisfied that what I have set out below is fair and reasonable given Mr T's circumstances and objectives when he invested.

#### *what should LP do?*

To compensate Mr T fairly LP must:

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

LP should also pay any interest, as set out below.

If there is a loss, LP should pay such amount as may be required into Mr T's pension plan, allowing for any available tax relief and/or costs, to increase the pension plan value by the total amount of the compensation and any interest.

If LP are unable to pay the total amount into Mr T's pension plan, you 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 total amount should be reduced to *notionally* allow for any income tax that would otherwise have been paid.

The *notional* allowance should be calculated using Mr T's marginal rate of tax at retirement.

For example, if Mr T is likely to be a basic rate taxpayer in retirement, the *notional* allowance would equate to a reduction in the total amount equivalent to the current basic rate of tax. However, if Mr T would have been able to take a tax free lump sum, the *notional* allowance should be applied to 75% of the total amount.

- In addition, LP should pay Mr T £250 for the distress and inconvenience caused.
- It is fair that LP pay Mr T an upfront sum equivalent to five years' worth of SIPP fees (calculated using the previous year's fees) This gives a reasonable period for the parties to arrange for the SIPP to be closed. There are a number of ways they may want to achieve that but this will give some confidence to Mr T that he will not be subject to further fees.

Awarding a lump sum for an amount equivalent to five years' fees is a fair balance. It is possible that any residual illiquid unregulated holdings in the SIPP could be removed from the SIPP in fewer than five years. However, overall five years' worth of fees is a fair way to resolve the issue now.

- Provide the details of the calculation to Mr T in a clear, simple format. Income tax may be payable on any interest awarded.

investment name	status	Benchmark	from ("start date")	to ("end date")	additional interest
Harlequin Properties	still exists	FTSE UK Private Investors Income Total Return Index	date of investment	date of settlement	not applicable

**actual value**

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

My aim is to return Mr T to the position he would have been in but for the unsuitable advice. This is complicated where an investment is illiquid (meaning it could not be readily sold on the open market) as in this case. It would be difficult to know the *actual value* of the investment. In such a case the *actual value* should be assumed to be nil to arrive at fair compensation. You should take ownership of the illiquid investment by paying a commercial value acceptable to the pension provider. This amount should be deducted from the total payable to Mr T and the balance be paid as I set out above.

If you are unwilling or unable to purchase the investment the *actual value* should be assumed to be nil for the purpose of calculation. You may wish to require that Mr T provides an undertaking to pay you any amount he may receive from the investment in the future.

### ***fair value***

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

Any additional sum paid into the investment should be added to the *fair value* calculation from the point in time when it was actually paid in.

Any withdrawal, income or other payment out of the investment should be deducted from the *fair value* at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there are a large number of regular payments, to keep calculations simpler, I will accept if you total all those payments and deduct that figure at the end instead of deducting periodically.

### **why is this remedy suitable?**

I have chosen this method of compensation because:

- Mr T wanted capital 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 a mix of diversified indices representing different asset classes, mainly UK equities and government bonds. It would be 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 T's circumstances and risk attitude.
- Mr T has not yet used his pension plan to purchase an annuity.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr T to accept or reject my decision before 21 May 2018.

Keith Taylor  
**ombudsman**