DRN-4789102

The complaint

Mr G is represented.

He says an unsuitable pension switch and a Discretionary Fund Management ('DFM') service was recommended by Verus Financial Services Limited trading as Verus Financial Services ('Verus') in 2022; that both recommendations were for the purpose of facilitating an unsuitable high risk non-standard investment in his Self-Invested Personal Pension ('SIPP'); that his holding in the investment is worthless, so his SIPP has lost all its value; and that Verus is responsible for the unsuitable advice, his financial loss and the trouble the matter has caused him.

Verus disputes the complaint. It says it committed no wrongdoing in the matter. However, it has also confirmed to Mr G, and to this service, that it intends to make arrangements to redress his position and to resolve his complaint.

What happened

Mr G's Aegon SIPP was switched to a Curtis Banks ('CB') SIPP, and the latter was invested through the services of Mayfair Capital Ltd ('Mayfair'). These facts are not disputed. Verus recommended the switch and Mayfair's investment service. This is confirmed in its suitability report dated 19 October 2022. The switch and SIPP investment happened thereafter. The SIPP was invested in the Persystemcy SICAV Plc Diversified Fund in Malta ('the fund').

His complaint submissions mainly state as follows:

- He was introduced to Verus in late 2022 by an individual who had been his adviser for many years – the 'introducer' – and he was led to believe this introducer was regulated at the time, under Verus and under another firm. The regulator's register shows this was not the case, that regulation of the introducer under Verus did not start until April 2023 and that his regulation under the other firm ended in September 2022. Therefore, Verus knowingly received the introduction from an unregulated individual and/or it knowingly had such an individual working for it. In either case, Verus' recommendations to him (Mr G) were delivered and actioned by the unregulated introducer.

- He was physically disabled and vulnerable at the time, with recent history of serious ill health, hospitalisation and departure from his profession (and job).

- His consideration at the time was to borrow money from his SIPP for a personal/family related reason, and the introducer suggested that a switch from Aegon to CB would facilitate that. He followed the suggestion for this purpose, otherwise, he was happy with the Aegon SIPP. Furthermore, the introducer's suggestion was to use a Small Self-Administered Scheme for the purpose. That was never actioned, instead the CB SIPP was recommended and actioned.

- Verus recommended the switch and Mayfair's service to him. He never met with Verus, contrary to its signed declaration that they had met, and he never received its

full suitability report (the introducer shared only four pages of the 24 page report with him). The report's contents, in the majority part that was not shared with him, contains numerous factual errors that essentially meant Verus' record of his personal profile was wrong. The contact details given for him were also wrong. It is likely that Verus was misinformed by the introducer, because no fact-finding (including risk profile assessment) was ever conducted between Verus and him (Mr G). Had he seen the full report at the time he would never have allowed such significant errors about his profile.

- He also never received any information about the fund or about the providers. Paperwork for the overall transaction either had his forged signature(s) on them or the introducer abused his vulnerability and obtained his signature(s) on them with deception and/or without explanation. He was a low to medium risk investor, so he would have never agreed to undertake the high risk non-standard fund. Even the application form for Mayfair's service stated that 70% of his SIPP was to be invested in medium risk assets and 30% in high risk assets, and that Mayfair had recommended a maximum 15% exposure to high risks – all of which conflicted with investment of the entire SIPP in the high risk fund. He also was not a professional investor, contrary to the classification Verus gave him and contrary to the basis on which that classification was reached. Furthermore, Verus was not authorised to advise on non-standard investments;

Mr G wants Verus to resolve and restore his position completely, as though he had left the Aegon SIPP as it was.

Verus mainly says:

- It understood that Mr G's case had been agreed with the introducer in July 2022, when he was still regulated under the other firm. It accepted the introduction of Mr G on the basis that he wanted to switch to a SIPP that allowed more investment choices and flexibility, and on the basis of his letter asking to be classified as an elective professional client. He had the characteristics, which it verified by checking his LinkedIn page (as part of its due diligence), that appeared to meet the requirements of the classification. Its recommendation of the SIPP switch and the Mayfair service was also based on these factors.

- The Mayfair DFM service was recommended to aid access to more investment choices, as he wanted.

- Its recommendations relied on the completed and signed fact find provided by the Introducer. Its suitability report – detailing its assessments, the information on which they were based, and information about the SIPP and the Mayfair service – was issued to the introducer at his request, because he believed it would be easier for him to deliver it to Mr G. It accepts that the email address given for Mr G did not seem to be accessible, but it relied on the introducer passing on the report to him. It accepts that the telephone number given for him was also inaccessible. It relied on confirmations from the introducer and from Mayfair that he fully understood the report and was engaged with the latter in the arranging investments for the SIPP.

- Its work was limited to the recommendation of the SIPP switch and Mayfair's service. It played no role in recommending the fund for the CB SIPP. It would not have given investment advice to Mr G because he was classified as a professional client, so he would have been free to choose any type of investment he wished, "standard or otherwise".

- It conducted its work in good faith and does not consider it has committed any wrongdoing. However, Mr G's complaint has made it aware of issues that do not tally with the information it received from the introducer and from Mayfair, so it is investigating that. In light of this, and in recognition of his unhappiness about the matter, it "… *will do all in* [its] *power to ensure that the position is rectified and* [Mr G is] *placed back into a position which is acceptable to* [him]".

The complaint was referred to our service and investigated by one of our senior investigators. She concluded that it should be upheld, and she mainly said:

- Verus had a regulatory obligation to *know its clients*. That meant it had to ensure it truly understood Mr G's circumstances and requirements before making its recommendation, especially given the high value of the Aegon SIPP. Despite this duty, it concedes that it had no direct interaction with him. It was not enough for it to check his LinkedIn profile. It could not rely on that information being up to date, and Mr G confirms that the information was outdated.

- There is a lack of evidence that he sought to be classified as a professional client at the time. His evidence is that he had always taken and been led by professional advice, as a retail client, in his other investments/pensions. It is unlikely he would have wanted to change that approach given his state of health and the fact that he was no longer able to work.

- Verus received a letter declaring the introducer as Mr G's power of attorney. At this point, it should have queried the letter (and its basis) and queried why he would require a power of attorney. The implication arising from the power of attorney was that he could not control his affairs. That stood in conflict with what Verus had been told about him seeking the switch in order to have more control over investments. It also conflicted with the notion of him being a professional client.

- It is unclear why, despite being told that his objective was to have more control over his investments, Verus recommended a DFM service to Mr G.

- Even though Verus recommended the SIPP switch, but not the fund investment, it still had a duty to ensure the eventual investments for the SIPP were suitable for Mr G's needs. It did not discharge that duty.

- It could not have properly considered suitability for him because the information about his profile (including objective and risk profile) it relied upon was wrong. Furthermore, there was an arrangement for Verus to provide him with ongoing advice, so it would have known about the CB SIPP being wholly invested in the high risk fund – which was unsuitable for Mr G.

- There was no suitable reason for the SIPP switch, and the fund investment that was eventually made in the CB SIPP was unsuitable for Mr G. Verus recommended the unsuitable switch and that facilitated the unsuitable investment. It is responsible for the position Mr G is presently in and it is responsible for redressing that.

Both parties commented on these findings.

Mr G's representative welcomed the outcome, gave some feedback on the findings and highlighted some aspects of the case. This included a request for separate compensation for the trouble and distress caused to Mr G, and clarification that his LinkedIn account had been

dormant between 2019 and 2020, and then was used for a handful of occasions in 2021 and in 2022 to make brief posts to former colleagues. Record of a telephone conversation between the representative and the investigator shows that they discussed the matter of separate compensation for trouble and distress. The representative was informed that because redress for financial loss, as set out in the investigator's view, will exceed our compensation/money award limit, additional compensation for trouble and distress will do the same.

Verus disputed the investigator's findings. It mainly said –

- the basis on which the investigator has set out redress is flawed, because there is no investment loss, the fund was inherently illiquid (pending an Initial Public Offering or a liquidity event) but there is still a tangible value for Mr G's holding;

- Mr G signed the fact-find and risk profiler documents three times, and there is no mention of the personal/family related objective within the fact-find;

- he also signed the letter electing to be classified as a professional client, so Verus was entitled to rely on that;

- the introducer and Mayfair also confirmed he was a professional client, so it was entitled to rely on their representations too;

- documentation he signed was signed in his home and in the presence of his representative, he holds responsibility for committing his signature and he has had ample opportunities to query any uncertainties over facts;

- the issue about the introducer's power of attorney is redundant to the case, the power of attorney itself was never used;

- Mr G's alleged vulnerability could be questioned based on evidence from the introducer about his capabilities, and conflicting information in the fact-find about his state of health;

- the CB SIPP was suitable for him and it did not lead to the investment in an unsuitable fund;

- the fund investment is the cause of the complaint, and Verus is not responsible for recommending it;

- it is vitally important to address, as a priority, the allegation(s) that there have been forgeries in the case, because it is a very serious allegation that trumps all the others, if proven it is one that determines whether (or not) the case enters another jurisdiction and if unproven it is one that calls into question the credibility of the other allegations in the case.

In addition to the above submissions, Verus stated to us that it is "… *actively searching for a solution that will help* [Mr G] *gain a satisfactory conclusion to the extent he will withdraw his complaint*" and that it will update us on its progress.

The investigator was not persuaded to change her view, and the matter was referred to an Ombudsman.

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.

Regulatory Context

The regulator's *Handbook* includes Principles for Businesses that were/are binding on Verus' conduct in Mr G's case, and that it would and should have been familiar with.

Principles 2, 3 and 6 require, in broad terms, firms to conduct their services with due skill, care and diligence, to make reasonable efforts to manage and control their affairs responsibly and effectively, and to uphold their customers' interests and treat them fairly. In terms of customers' interests, the Conduct of Business Sourcebook ('COBS') section of the Handbook contains, at COBS 2.1.1R, the *client's best interests rule* which, as the title suggests, requires firms to uphold their clients' best interests at all relevant times.

Case law – Ouseley J, in R (British Bankers Association) v Financial Services Authority [2011] EWHC 999 (Admin) – also confirms that The Principles are ever present requirements that firms must comply with.

In addition, there are rules in COBS about suitability of advice that firms must follow in giving regulated advice, and Verus would (and should) have been familiar with them too.

With specific regard to pension switches, the regulator has issued, over the years, a number of important and well known alerts and guidance to firms in the industry. Its pensions related industry alert to firms in 2013 included the following – "*It has been brought to the FSA's attention that some financial advisers are giving advice to customers on pension transfers or pension switches without assessing the advantages or disadvantages of investments proposed to be held within the new pension*." The alert proceeded to warn firms against such conduct.

Its *further alert* in April 2014 included the following;

"*Where a financial adviser recommends a SIPP knowing that the customer will transfer or switch from a current pension arrangement to release funds to invest through a SIPP, then the suitability of the underlying investment must form part of the advice given to the customer. If the underlying investment is not suitable for the customer, then the overall advice is not suitable*."

"*If a firm does not fully understand the underlying investment proposition intended to be held within a SIPP, then it should not offer advice on the pension transfer or switch at all as it will not be able to assess suitability of the transaction as a whole*."

I appreciate that, according to the regulator's register, Verus became an authorised/regulated firm in 2017. However, it is a firm operating with permissions to conduct pensions and investments related work. Therefore, it is expected to have made itself aware of – and, where necessary, to have complied with – regulatory alerts and guidance that were/are relevant and applicable to its work, and that were issued before and after gaining its authority. The 2013 and 2014 alerts were only four and three years old when Verus became authorised so, at the time, they were relatively recent. It is also noteworthy that these alerts and guidance broadly reflect underlying regulatory rules that are already binding on firms.

The above sums up, without being exhaustive, the regulatory context that I will be mindful of

in addressing Verus' responsibilities in Mr G's case.

I acknowledge that a key part of its arguments is that the approach to the complaint should not be based on him being a retail client, where full regulatory protection (including the context above) would apply. Instead, it says, the approach should be based on him being an elective professional client, in which case distinctly less regulatory protection applies. For the reasons I address below, akin to those considered by the investigator, I disagree. Overall and on balance, I find that Mr G was not properly assessed as an elective professional client, he was not, and did not seek to be, one at the time of Verus' advice and he was a retail client to whom full regulatory protection applied, so the regulatory context above applies to his complaint.

Scope

The scope of this decision is defined by Mr G's allegations that Verus' recommendation of the SIPP switch and Mayfair's service were unsuitable, that he was misled into the recommendation, that the recommendation facilitated the unsuitable investment in the fund, and that Verus is therefore responsible for the financial loss he has incurred.

The scope of this decision does not extend to determining a separated allegation about forged documentation. Criminal law, which is engaged in such a matter, is outside our service's remit, so we do not have jurisdiction to make that determination, and I do not do so. I also do not consider that I have to. For example, I can take a fair and reasonable view, based on the facts, available evidence and probability, on whether (or not) Mr G knowingly and wilfully signed relevant documentation, without having to definitively accuse a specific party of committing forgery of his signature. Doing the former, if necessary, is enough to treat the complaint, and I need not do the latter. Furthermore, it does not appear that Verus was/is the subject of his references to documentation possibly having his forged signature(s). Instead, those references appear to relate to the introducer.

For the above reasons, I do not accept Verus' argument that the allegation about potentially forged signatures needs to be addressed before the complaint's issues are addressed.

The SIPP Switch and Fund Investment

Verus' profiling of Mr G and classification, of him, as an elective professional client were fundamentally flawed. It never met or engaged directly with him at the time of its recommendation. As the investigator said, it had the regulatory obligation to *know its client*. It did not discharge that obligation in relation to Mr G.

Its suitability report is evidence that it undertook the role, and responsibility, to give him regulated advice, which it did and in which it recommended a SIPP switch and the use of a DFM service. It says it did so because Mr G asked to be treated as an elective professional client and on the strength of the due diligence it conducted to conclude that he was such a client. In a nutshell, that due diligence appears to have been little or no more than the classification request letter, input/information from (or through) the introducer (including the fact-finding conducted by the introducer), its online research into Mr G (including use of his LinkedIn page) and its use of the 'Smart Search' Know-Your-Client ('KYC') online application. Crucially, the due diligence did not include any meeting or discussion directly with Mr G.

Under COBS 3.5.3R, as it was in 2022 and as it remains, three regulatory requirements exist in conducting an elective professional client classification – the "qualitative test", the "quantitative test" and the procedural requirement – and the first and third must be applied as a minimum. Each requirement/test that is applied must be passed.

The qualitative test is defined, under COBS 3.5.3 (1)R, as follows –

"*the firm undertakes an adequate assessment of the expertise, experience and knowledge of the client that gives reasonable assurance, in light of the nature of the transactions or services envisaged that the client is capable of making his own investment decisions and understanding the risk involved*" [my emphasis]

Based on the above, Verus was required to undertake an "adequate assessment" of Mr G's profile and credentials, in terms of expertise, experience and knowledge, in the classification process. The introducer conducted the fact-finding that fed into its classification process. It then relied on that fact-find – after seeking to verify parts of it by checking Mr G's LinkedIn page – as the main basis (alongside the classification request letter) for its classification.

It is undisputed that the introducer conducted no regulated role within or for Verus until spring 2023. He had no regulatory connection with Verus prior to that. The regulator's register confirms this. It also confirms that the introducer's connection with the other firm expired on 13 September 2022 and that the other firm had no connection with Verus.

The classification request letter with Mr G's signature (which he disputes) is dated 20 September 2022; the fact-find document is also signed (which Mr G also disputes) but it is undated, however it refers to him as a professional client so it is unlikely to have been completed before the classification request letter; Verus produced a pension switch report on 18 October 2022 and its suitability report is dated 19 October 2022; and, for the sake of completeness, Mr G's applications for the CB SIPP and Mayfair service (both with signatures that he disputes) are dated in November 2022.

Based on the above, the introducer's fact-finding probably happened somewhere between 20 September 2022 and 18 October 2022. During this period, he had no regulated connection with Verus and no regulated connection with the other firm, so he was unregulated. Therefore, Verus had an unregulated introducer conduct the fact-finding – and submit the classification request letter that he claimed was from Mr G (but Mr G disputes) – that was used in its classification of Mr G as an elective professional client. Furthermore, it did this without engaging directly with Mr G.

The regulator's Handbook defines an introducer as –

"… *an individual appointed by a firm, an appointed representative or, where applicable, a tied agent, to carry out in the course of designated investment business either or both of the following activities:*

(a) effecting introductions;
(b) distributing non-real time financial promotions."

Guidance in the Supervision ('SUP') section of the Handbook, at SUP 12.2.13(G), says unless an introducer is also an Appointed Representative ('AR') s/he cannot conduct a regulated activity or perform a controlled function. In the context of fact-finding, the controlled Customer Dealing Function is relevant. The introducer was not an AR, he was unregulated at the time of the fact-finding and he was not authorised to conduct a customer dealing function. For these reasons, Verus should not have allowed the introducer to play any role in the fact-finding, let alone conduct the fact-finding by himself, as seems to have been the case.

On the above grounds, I am persuaded that Verus failed to meet the requirement to conduct an 'adequate assessment' of Mr G's client classification. What it did was *inadequate*. In the

circumstances – including the likelihood that it knew the introducer was unregulated, and including the expectation that it ought reasonably to have known that – the minimum it should have done was ensure that it contacted and engaged with Mr G directly to either verify all the information it had received about him or to conduct the fact-finding itself.

It did not do that. Had it done so, it would have discovered the important errors within the information it had been given. Especially, with regards to the client classification, Mr G's dispute of the classification request letter and the facts that, contrary to what the fact-find said, he was out of work, his previous work experience, knowledge and expertise was not as described in the letter, he was not in good health, and he did not wish to be classified as a professional client.

This decision will be published and Mr G must remain anonymous. For this reason, and to avoid the risk of breaching his anonymity, I will not go into the details of his disability. However, I can refer to evidence of the Lasting Power of Attorney ('LPA') that was executed, with him as the donor, in 2019, and I can find, as I do, that the LPA is evidence that he was not in a fit state (from then and thereafter) to manage or control his affairs. It follows, that he was also not in a fit state to be regarded, in 2022, as an elective professional client. This too would have been information available to Verus at the outset of the introduction, had it properly conducted its fact-finding by directly engaging with Mr G.

He did not ask to be classified as an elective professional client. For the above reasons, I find the classification request letter to be unreliable. In his circumstances as they were at the time (and since 2019), he was nowhere near being in a position to be an elective professional client. He was a retail client, by default, so full relevant regulatory protection, and the regulatory context mentioned above, applies to him and to his case.

Verus' failure and wrongdoing at the outset, as found above, appears to be the root cause of its responsibility in this case, and of the problems Mr G has subsequently faced. The information it used for its client classification was wrong and was contrary to what defined him. The information it used for its suitability assessment, advice and report was also wrong (and was also contrary to what defined him) for the same reason – both relied on the erroneous fact-find.

The same root cause seems to have resulted in Verus proceeding to recommend the SIPP switch without giving due regard to the considerations that the regulator's 2013 and 2014 alerts expected it to apply. Those considerations ought to have prompted it to clarify, directly with Mr G, his plans for investment of the SIPP after the switch. As the 2014 alert said, "… *the suitability of the underlying investment must form part of the advice given to the customer. If the underlying investment is not suitable for the customer, then the overall advice is not suitable*."; and "*If a firm does not fully understand the underlying investment proposition intended to be held within a SIPP, then it should not offer advice on the pension transfer or switch at all as it will not be able to assess suitability of the transaction as a whole*."

Due to the fact that it relied, in the main, on the introducer and on the information he provided, it appears that Verus lost sight of the need to discharge its advisory obligation comprehensively – from properly conducting its fact-find to assessing suitability of the investment proposition for the SIPP switch it was being asked to advise on. But for this unreasonable reliance, it probably would have engaged directly with Mr G, discovered the true facts of his situation and, possibly if not probably, be reminded of the need to look into the investment proposition for the SIPP after any switch it was inclined to recommend.

Verus failed to uphold the regulatory expectation and requirement to look into the suitability of the investment proposition for the SIPP (post switch). I have given a potential reason for

this above, but even if that was not the reason the fact remains that it committed this failure. Its suitability report confirms it gave no consideration to the investment proposition for the SIPP and that it essentially left it to Mayfair to address that after the switch was completed. The requirement, had it been complied with, would have given it a second opportunity to verify the entire matter directly with Mr G, having missed the first and main opportunity at the point of fact finding. It could and should have discussed the investment proposition (for the SIPP) with him as it was considering its advice, but it did not. Or, as the 2014 alert said, if it did not understand the underlying investment proposition for the SIPP, post switch, it should not have recommended the switch.

Verus' recommendations were pivotal. They led directly to the CB SIPP application, to the Mayfair service application, to the establishment of the CB SIPP and to the fund investment within it. I anticipate it would argue that Mr G's signatures on the relevant applications and investment instruction played their own roles in what happened, and that it has no responsibility for those signatures. I agree. Neither of the applications would have been successful without the signatures on them and Mayfair would not have executed the fund investment without the signed instruction it received.

However, it is more likely (than not) that none of these things would have happened if Verus had, at the outset, properly conducted its fact-finding about Mr G and if it had discharged the requirement to look into the underlying investment proposition for the SIPP in the course of giving advice on the switch. Either should and would have resulted in direct engagement with Mr G, and Verus would have learnt the true nature of what he had discussed with the introducer, learnt that he was not a professional client and learnt the truths about any information and/or signatures and/or representations it had received from the introducer.

Available evidence supports the likelihood that Mr G would have informed Verus of what he has set out in his complaint, so it would then have learnt that the advice the introducer had said was required was actually not required or requested, and that a SIPP switch for the purpose presented by the introducer was unsuitable. At this point, Verus would reasonably have been expected to advice against the SIPP switch, given that the objective that had been presented to him (by the introducer) was false.

Had Verus engaged directly with Mr G – mainly, at the outset in its fact finding and, at the latest, as it looked into the investment proposition for the SIPP (which it should have done but did not do) – I consider it more likely (than not) that what I have set out above would probably have happened. He would have withdrawn from the SIPP switch idea altogether and not wanted any advice on it. As I have explained, such engagement should have happened at the outset, during fact finding, before any advice was considered or given. His trust in the introducer would have been broken upon realising that he had made misrepresentations to Verus, and that would probably have affected his view of Verus, because he was introduced to Verus by the introducer. Furthermore, the SIPP switch appears to have been the introducer's idea, so that (the idea) too would probably have been affected.

For the above reasons that I do not accept Verus' argument about Mr G taking responsibilities for the signatures. His position is that he was not aware of them at the time and I have not seen evidence to call that into question.

Conclusion

Based on the above findings, I uphold Mr G's complaint and I find that but for Verus' failings in the matter, mainly at the outset, he would probably have withdrawn completely from the SIPP switch idea, he would probably not have pursued any advice for the SIPP switch, instead he would have left the Aegon SIPP as it was, and the CB SIPP and the fund

investment would never have happened.

I acknowledge, and have reflected above, Verus' promises to make his position good, but that has yet to happen. Therefore, it remains a task for our service, following the upholding of his complaint, to make provisions for how Verus must redress it, and to order Verus to promptly complete the calculation and payment of redress after his acceptance of this decision is confirmed.

Before moving to the redress provisions, I should note that a particular piece of information was very recently brought to my attention, and was shared with Verus for comments. However, upon consideration, I have concluded that the information is not necessary to determine the complaint.

Putting things right

Before setting out the redress provisions and orders, I will address Mr G's representative's reference to compensation for the trouble and distress he has been caused in the matter.

That trouble and distress is acknowledged. Knowing certain details about Mr G's circumstances, that I have not mentioned in this decision in order to preserve his anonymity, I consider that the trouble and distress he has been caused has compounded his negative experiences in the matter.

Where I uphold a complaint, I can make a *money award* – including compensation for trouble and distress – requiring a financial business to pay compensation of up to £150,000, £160,000, £170,000, £190,000, £195,000, £350,000, £355,000, £375,000, £415,000 or £430,000 (depending on when the complaint event occurred and when the complaint was referred to us) plus any interest that I consider appropriate. If fair compensation exceeds the compensation limit the respondent firm may be asked to pay the balance. Payment of such balance is not part of my determination or award. It is not binding on the respondent firm and it is unlikely that a complainant can accept my decision and go to court to ask for such balance.

A complainant may therefore want to consider getting independent legal advice in this respect before deciding whether to accept the decision. This is directly relevant to Mr G's case, so for this reason and the reasons given below I repeat, he should consider getting independent advice with regards to the award in this decision before deciding whether (or not) to accept it.

In his case, the complaint event occurred after 1 April 2019 and the complaint was referred to us after 1 April 2023 but before 1 April 2024 (it was referred to us in November 2023), so the applicable compensation limit would be £415,000. The value of the switched SIPP and the amount put into the fund investment was/is around double this amount, and it is this starting value that will feature in the redress calculations ordered below. It is therefore probable, if not certain, that the value of redress for financial loss in his case will significantly exceed the applicable compensation limit – especially if, as it appears, there is no realisable value in the present CB SIPP and fund holding.

Given that compensation for financial loss is already bound to go beyond the compensation limit, and the fact that Verus does not have to pay the part of a money award that exceeds the applicable compensation limit unless it chooses to – and the absence grounds that indicate it will do that – an award for trouble and distress is, in real terms, redundant in the present case.

Fair Compensation

In assessing what is fair compensation, my aim is to put Mr G as close as possible to the position he would probably now be in if he had been given suitable advice. For the reasons given in my findings (above) I consider that he would have retained the Aegon SIPP. I am satisfied that what I have set out below, based on the notional value(s) of the Aegon SIPP, is fair and reasonable redress for Mr G.

What must Verus do?

To compensate Mr G fairly, Verus must:

- Compare the performance of his investment (stated in the table below) with the notional value it would have (on the end date in the table below) if he had retained the Aegon SIPP. If the actual value is greater than the notional value, no compensation is payable. If the notional value is greater than the actual value, there is a loss, the difference is the loss and is the compensation payable.

- Pay the compensation into Mr G's pension plan to increase its value by the total 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 Verus is unable to pay the total compensation amount into the pension plan, it should pay that amount direct to Mr G. Had it been possible to pay into the plan, it would have provided a taxable income. Therefore, the total compensation amount 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 is not a payment of tax to HMRC, so Mr G would not be able to reclaim any of the reduction after compensation is paid.

- The *notional* allowance should be calculated using Mr G's actual or expected marginal rate of tax at his selected retirement age. If he would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation.

- For the reasons given in my findings, but for Verus' failings there would have been no SIPP switch advice. So Verus must refund to Mr G the adviser's fees it charged and received together with simple interest on the amount at 8% a year, from the date the fees were paid to the date of settlement. If the above redress comparison shows that no compensation is payable, the difference between the actual value and the notional value can be offset against this refund.

- Provide the details of the calculation to Mr G in a clear and simple format.

Income tax may be payable on any interest paid. If Verus deducts income tax from the interest it should tell Mr G how much has been taken off. It should give him a tax deduction certificate in respect of interest if he 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
The Curtis Banks	Still exists but illiquid	Notional value from	Date of investment	Date of settlement	Not Applicable

SIPP/SIPP portfolio		previous provider (the Aegon SIPP)			

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 SIPP portfolio. This is complicated where an asset is illiquid (meaning it could not be readily sold on the open market) as it appears in this case. Verus should take ownership of any illiquid asset(s) by paying a commercial value acceptable to the pension provider. The amount Verus pays should be included in the actual value before compensation is calculated.

If Verus is unable to purchase the illiquid asset(s), its value should be assumed to be nil for the purpose of calculating the *actual value*. Verus may require that Mr G provides an undertaking to pay it any amount he may receive from the illiquid asset(s) in the future. That undertaking must allow for any tax and charges that would be incurred on drawing the receipt from the pension plan. Verus will need to meet any costs in drawing up the undertaking.

Notional [Fair] Value

This is the value of the investment, had it remained with the previous provider until the end date. Verus should request that the previous provider calculate this value for the period between the start and end dates.

Any withdrawal from the SIPP during the period should be deducted from the notional value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on.

The CB SIPP only exists because of the illiquid asset(s) in it. In order for the CB SIPP to be closed and further fees that are charged to be prevented, the asset(s) need to be removed. I have set out above how this might be achieved by Verus taking over the illiquid asset(s). This is also something that Mr G can discuss with the provider directly. But I do not know how long that will take.

Third parties are involved and we do not have the power to tell them what to do. If Verus is unable to purchase the illiquid asset(s), to provide certainty to all parties it is fair that Verus pays Mr G an upfront lump sum equivalent to five years' worth of the CB SIPP's 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 SIPP to be closed.

My final decision

For the reasons given above, I uphold Mr G's complaint and I order Verus Financial Services Limited trading as Verus Financial Services to calculate and pay him redress as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 29 July 2024.

Roy Kuku
Ombudsman